# Open Source – UMW Round 1

## Off-Case

### Off

#### The United States federal government should reform patent law to ban reverse payment settlements

#### Regulation is better than antitrust.

Dennis W. Carlton et al. 16, David McDaniel Keller Professor of Economics, Booth School of Business, University of Chicago; Research Associate, National Bureau of Economic Research, 9-20-2016, "DOES THE FTC’S THEORY OF PRODUCT HOPPING PROMOTE COMPETITION?," Journal of Competition Law & Economics, DOI: 10.1093/joclec/nhw025

The FTC’s novel “**product hopping**” theory has recently appeared in court cases and has led to publically reported FTC investigations.1 Courts have disagreed on the merits of the theory.2 According to this theory, under certain circumstances explained in more detail below, a firm can violate the **antitrust** laws by introducing a new product that harms its rivals and consumers. Rivals are supposedly harmed because they lose sales to the new product. Consumers are supposedly harmed because they are assumed to gain no significant therapeutic benefits from the new product compared to the old one but must pay a higher price for the new product. Although the FTC so far has applied the theory only to pharmaceuticals, **nothing** in the theory **limits its application** to the drug industry. The theory is at best a **misguided attempt** to fix a regulatory problem in the pharmaceutical industry associated with the Hatch-Waxman Act3 and is premised on the proposition that competition does not work. Using **antitrust** law to fix such a regulatory problem, assuming one exists, would not only potentially cause consumer harm in pharmaceutical markets, but also create an **undesirable antitrust precedent** for other industries.

Assuming for sake of argument that there is a problem to be fixed in pharmaceutical markets, the appropriate remedy would be to alter the regulation, as opposed to applying the antitrust laws, which is designed to address harm to competition and not harm caused by ineffective regulations. The objective of the antitrust laws is to promote market competition, based on the underlying assumption that such competition benefits rather than harms consumers. The creation, introduction, and promotion of new products and the protection of investments by limiting “free-riding” off these investments by other competing firms is desirable competitive behavior. To use the antitrust laws to condemn such behavior would therefore misuse antitrust law. Creating disincentives for firms to introduce new branded products, under the guise of “fixing” problems that exists only when viewed by the FTC in the context of Hatch-Waxman’s regulatory objectives, contradicts the antitrust law’s ultimate goal of promoting competition. Even worse, the consequence of attempting to fix the problem, if one indeed exists, through antitrust enforcement will be to chill incentives for product innovation in an industry where the most important health advances come from product innovations. Furthermore, such an attempt could also chill product innovation in **other industries**, because antitrust law applies broadly to all industries, and not merely the pharmaceutical industry.

### Off

#### Reconciliation will pass---Biden’s continued push in ongoing negotiations is key

Emily Cochrane et al, Luke Broadwater and Jonathan Weisman 10-1 [NYT ‘‘*We’re going to get this done,’ Biden says after meeting with House Democrats* on his domestic agenda.,” 10-1-21, <https://www.nytimes.com/live/2021/10/01/us/infrastructure-bill-house>, hec]

President Biden emerged from a meeting with House Democrats on Friday expressing confidence that his party would ultimately unite behind his domestic agenda, but he suggested that a deal on a major social safety net and climate policy bill could be as far as weeks off, raising the prospect of a drawn-out negotiation. “I’m telling you, we’re going to get this done,” Mr. Biden said at the Capitol, after huddling with Democrats who have been feuding over his two top-priority bills. He added: “It doesn’t matter when. It doesn’t matter whether it’s in six minutes, six days or six weeks. We’re going to get it done.” One of the measures he is seeking, a $1 trillion bipartisan infrastructure package, is stalled in the House as progressives refuse to support it until they see action on a major budget bill to expand health care, education, climate change initiatives and paid leave. Speaker Nancy Pelosi postponed a planned vote on the infrastructure bill on Thursday, and it was not clear after the meeting with Mr. Biden whether she planned to move forward with it as scheduled on Friday. A closed-door meeting Ms. Pelosi had called on Friday morning did little to resolve the disputes, as lawmakers from swing districts pleaded for passage of the infrastructure bill and liberals in safe Democratic seats said they would not vote yes until the Senate the larger measure. Later, Mr. Biden — who was accompanied by top advisers, including Steve Ricchetti, Cedric Richmond and Louisa Terrell, the White House director of legislative affairs — made his first appearance before the House Democratic Caucus to try to bridge the divides. Many Democrats had issued public pleas for Mr. Biden to become more personally involved in the negotiations, saying he needed to allay the escalating mistrust and frustration among Democrats. “I think the president might be the only person that can bridge both the trust gap and the timing gap,” said Representative Dean Phillips, Democrat of Minnesota.

#### Antitrust reform requires PC and trades off

Peter C. Carstensen 21, the Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, February 2021, “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST,” https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities. 15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate! 16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Package failure locks in catastrophic climate change---extinction

Paul Bledsoe 9/4, strategic adviser at the Progressive Policy Institute and a professorial lecturer at American University’s Center for Environmental Policy. He served on the White House Climate Change Task Force under former President Bill Clinton, “Climate devastation is upon us. Congress must act.,” NY Daily News, 9-4-2021, https://www.nydailynews.com/opinion/ny-oped-climate-congress-20210904-mqbe75qni5b77ocke5orzrmjce-story.html?outputType=amp

Many Democrats publicly expressed the need to act on climate change, and offered legislation at the federal and state level. Yet while the ability of Democrats to pass needed legislation was hindered by some divisions within their own ranks, resistance came primarily from Republicans who overwhelmingly opposed any serious actions to limit climate change and the greenhouse gas emissions that cause it. With a few prominent exceptions like former Sen. John McCain, most Republicans derided climate concerns as alarmism and claimed any attempts to limit emissions would be devastating to the U.S. economy. Fast forward 20 years, and our climate situation has grown immeasurably more grave. As predicted climate change impacts are inflicting huge human and economic costs in the U.S., with much worse to come without immediate action. Yet stunningly, our broken politics on climate change seem much the same as decades before. Democrats, beginning with President Biden, are desperately pushing to enact hundreds of billions of dollars in climate change and clean energy measures later this month as part of a wider economic and budget bill. These actions can cut U.S. emissions by 50% below 2005 levels by the end of the decade, and put the U.S. in a stronger position to force other nations to act in key climate negotiations in November. But right now Republicans are unified in opposition to any but cursory climate actions. John Barrasso of Wyoming, the top Republican on the Senate Energy Committee, claimed the Biden climate measure was a “spree to impose this green new disaster on every American,” willfully ignoring the real climate disasters all around us that Biden’s legislation will help limit. This summer, every single Republican member of the key Senate Finance Committee voted against tax incentives for solar, wind, geothermal, electric vehicles and dozens of other clean energy sources. The stakes of the climate crisis are far more profound and long-lasting than most leaders seem to recognize. What’s needed is a united, bipartisan front like that the U.S. created during the Cold War, in part to force other key nations like China to cut their emissions as aggressively as we do. An inkling that this may be possible is found in bipartisan support for recent legislation promoting American technology innovation to compete globally, and significant bipartisan support for infrastructure legislation. But slow action to cut emissions won’t work. We must act decisively and quickly now in Congress this fall to create a clean energy future and cut emissions that are destabilizing our climate. Otherwise, we are consigning ourselves and all of those who come after us to a devastated and denuded world.

### Off

#### The fifty states and all relevant entities through the National Association of Attorneys General Antitrust Task Force should subject all reverse payments to antitrust scrutiny

#### States solve

Arteaga 21 [Juan and Jordan Ludwig; January 28; former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, J.D. from Columbia Law School; partner in the Antitrust and Competition Group at Crowell and Moring firm, J.D. from Loyola Law School; Global Competition Review, “The Role of US State Antitrust Enforcement,” <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement>]

In the United States, competition laws have been implemented and enforced through a dual system where the state and federal governments play distinct, yet complementary, roles in regulating the competitive process. While the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) are widely viewed as the stewards of US antitrust laws, state attorneys general have long played an important, albeit varying, role within the United States’ antitrust enforcement regime. This has been especially true during the past 30 years because state attorneys general have become much more effective at coordinating their antitrust enforcement efforts to ensure that they have a meaningful seat at the table in any actions brought jointly with their federal counterparts or are able to bring their own actions when the DOJ and FTC decide not to do so.

Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition.[[2]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-126) In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions.[[3]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-125) This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage.[[4]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-124) Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.[[5]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-123)

In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process.[[6]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-122) As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States.[[7]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-121) This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.[[8]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-120)

In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring parens patriae suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations.[[9]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-119) Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices.[[10]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-118) These laws had their intended effect of reinvigorating state antitrust enforcement.

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints.[[11]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-117) The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’.[[12]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-116) No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications.[[13]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-115) To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.[[14]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-114)

### Off

#### Core antitrust laws’ must be economy wide---the aff only effects a subset

Gerber ’20 [David; October; Distinguished Professor of Law at Chicago-Kent College of Law, Illinois Institute of Technology; Oxford Scholarship Online, Competition Law and Antitrust, “What is It? Competition Law’s Veiled Identity,” Ch. 1, p. 14-15]

C. A Core Definition

The Guide uses the terms “competition law” and “antitrust law” to refer to a general domain of law whose object is to deter private restraints on competitive conduct. We look more closely at the terms:

1. “General”—The laws included are those that are applicable throughout an economy and thereby provide a framework for all market operations (there are always some exempted sectors). Laws dealing only with specific markets (e.g., telecommunication) do not play that role.

2. “Domain of Law” here refers to a politically authorized set of norms and the institutional arrangements used to enforce them.

Is it law—or is it policy? The relationship between “competition law” and “competition policy” is not always clear. Often the terms are used interchangeably, but there can be important differences between them. Both can refer to norms used to combat restraints on competition, but they represent two different ways of looking at the relevant laws, and the differences can influence how norms are interpreted and applied. “Law” implies that established methods of interpretation are used to interpret and apply the norms and that established procedures are the sole or primary means of enforcing and changing the norms. In this view, the norms are a relatively stable component of a legal system. Thinking of those same norms as “policy,” on the other hand, implies that they are a tool of whatever government is in power and that it can use and modify them as it wishes.

3. “Restraint” refers to any limitation imposed by one or more private actors that reduces the intensity of competition in a market.

4. “Competition” refers to a process by which firms in a market seek to maximize their profits by exploiting market opportunities more effectively than other firms in the market.

#### Voting issue--- the number of potential subsets is infinite which creates a moral hazard to rush to small non-controversial tweaks that shreds limits and ground

### Off

#### Courts have gutted FTC anti-fraud measures---Congress will pass a legislative fix now, BUT it’ll be a referendum on FTC overreach.

Christopher Olsen & Stephen Schultze 21, Olsen is a partner in the privacy and cybersecurity practice at Wilson Sonsini and Vice Chair of the Privacy and Information Security Committee of the ABA Antitrust Law Section, and former Deputy Director of the FTC’s Bureau of Consumer Protection; Schultze is an Associate in the privacy and cybersecurity practice at Wilson Sonsini, “FTC Authority Under Siege: Monetary and Injunctive Relief at Risk in Courts as Congress Contemplates a Response,” The Antitrust Source, April 2021, ABA

It is hard to imagine a favorable outcome for the FTC after this oral argument. The Court will prob- ably limit 13(b) relief to injunctions, requiring the Commission to resort to cumbersome administrative proceedings to get any monetary relief. That would dramatically undermine the Commission’s work over several decades to build a robust fraud program.40 It would leave Section 5 and 19 as the only avenues for monetary relief under the FTC’s general consumer protection authority. Under Section 5, the Commission may impose monetary civil penalties under some limited circumstances.41 Under Section 19, the Commission may obtain monetary consumer redress or disgorgement but only after obtaining a final cease-and-desist order through administrative litigation and only after demonstrating that “a reasonable man would have known under the circumstances [that the conduct] was dishonest or fraudulent.”42 Moreover, Section 19 includes a statute of limitations whereas Section 13(b) does not.43 Thus, the FTC has strongly favored Section 13(b) actions. At oral argument, the FTC conceded that going directly to court is “more attractive in certain instances” and that the Commission brings “far more [consumer protection] cases” in court than through its own administrative proceedings.

An Unlikely Out for the FTC. It is worth noting that the Court could also rule against the FTC in a more limited way, although there was little indication at oral argument that it would. Last term, the Court held 8-1 in Liu v. SEC that even where a statute permitted “any equitable relief that may be appropriate,” the government’s equitable monetary relief could not exceed the wrongdoer’s net profits.44 Justice Sotomayor wrote for the court that the government cannot impose a “penalty” under equity; therefore actual net profits is all that restitution or disgorgement allows.45

If the FTC could still obtain “net profits,” AMG would not be a total loss for the agency. AMG argued in the briefs that the Ninth Circuit “did not limit the Commission’s recovery to anything close to net profits” when it awarded the FTC $1.27 billion, which was more than triple the amount that petitioners had allegedly received.46 But the textual difference between 13(b)’s “permanent injunction” and the SEC statute’s “any equitable relief that may be appropriate” makes it unlikely that the FTC will win even this less-than-half a loaf. Instead, the FTC will likely lose any ability to obtain monetary relief under 13(b). And limits to its ability to obtain even injunctive relief may also soon bubble up to the Supreme Court.

Even for Injunctive Relief, Lower Courts Are Reconsidering Whether Past Misconduct Is Actionable Under 13(b)

As noted above, Section 13(b) gives the FTC the authority to obtain injunctions in federal court only where a defendant “is violating, or is about to violate” the law. It is hornbook law that injunctive relief cannot be based solely on past conduct.47 Instead, there must be a present violation or some prospect of future violation. But the circuits differ on how likely the future violation must be.

The majority view has been that 13(b) requires the typical injunction predicate—“some cogniza- ble danger of recurrent violation, something more than the mere possibility.”48 The Ninth Circuit is a good example, having long embraced this standard in Section 13(b) cases.49 Most of the lower courts continue to rely on the “cognizable danger” standard, with the Ninth Circuit showing no signs of altering its view.50 This is a “likelihood of recurrence” standard, based on a factual analy- sis of the totality of the circumstances. On this reading, 13(b)’s “about to violate” language adds nothing to the inherent injunctive relief requirements.

Shire Leads the Way. The Third Circuit recently adopted a more demanding threshold. In Shire Viropharma, the court held that the “about to violate” provision plainly limited injunctive relief to “impending conduct.”51 The court reasoned that 13(b) “was not designed to address hypothetical conduct or the mere suspicion that such conduct may yet occur”; that it is not enough for the FTC to allege a “vague and generalized likelihood of recurrent conduct.”52 Moreover, the court held that the 13(b) requirement applies “right out of the gate” at the pleading stage, rather than at a later stage when the court is considering appropriate remedies.53 The Third Circuit thus upheld the trial court’s conclusion that the FTC failed to meet the 13(b) threshold when it merely alleged that the defendant had the “incentive and opportunity” to commit violations like it had in the past.54 The FTC did not petition for certiorari, presumably out of concern that the Supreme Court might adopt the Shire view.55

No other circuit has squarely addressed the Third Circuit’s view. Some lower courts in other cir- cuits have at least acknowledged Shire’s holding without explicitly rejecting it.56 Procedurally, we should expect more of these challenges to occur at the pleading stage, creating early opportunities for appellate review and Supreme Court cert petitions.57 Indeed, even some district courts in the Shire-hostile Ninth Circuit have nevertheless entertained 13(b) challenges “right out of the gate” at the motion to dismiss stage.58 Moreover, regardless of whether courts go so far as to adopt the Shire test, violators may sometimes be able to avoid any action under 13(b) by ceasing their violations before the FTC files suit. For example, a district court in the Ninth Circuit granted summary judgment where Amazon had ceased the alleged practice after the FTC began an administrative investigation but before the suit was filed, and the court could find no “cognizable danger of a recurring violation.”59

A Shire-style defense is not just permitted at the pleading stage, it likely must be raised early oth- erwise it will be forfeited. The Shire court held flatly that “13(b)’s ‘is’ or ‘is about to violate’ requirement is non-jurisdictional.”60 This is no academic distinction. It means that a Shire argument might have to be raised on a motion to dismiss. The sometimes obtuse and varied rules of waiver and forfeiture may control whether a Shire defense has fallen out of the case.61 While circuits do not have uniform rules, they all agree that “waiver and forfeiture rules . . . ensure that parties can determine when an issue is out of the case, and that litigation remains, to the extent possible, an orderly progression.”62

Failure to timely raise a Shire argument has already tripped up one prominent defendant. In FTC v. Vyera, the Southern District of New York recently rejected a 13(b) challenge framed as an affirmative defense because “Defendants had a full opportunity to challenge the sufficiency of the pleading at the motion to dismiss stage.”63

The potential impact of Shire has not gone unnoticed by consumer protection advocates. In a recent congressional hearing, one advocate argued that, under Shire, “wrongdoers that line their pockets with money they have illegally obtained can sail off into the sunset just as long as they retire their scams before the FTC catches up with them.”64 Jessica Rich, former Director of the FTC’s Bureau of Consumer Protection, similarly noted that Shire limited the FTC’s authority to remedy past conduct and called for Congressional action.65

Whether under Shire in the Third Circuit or under less-restrictive standards in the Ninth Circuit and elsewhere, courts’ limitations on injunctive relief under Section 13(b) increasingly curtail the availability of the FTC’s go-directly-to-court approach of the past few decades. Nobody would dispute that— as the Chief Justice observed at AMG oral arguments—an agency only has the authority delegated to it by Congress.66 Of course, Congress may yet delegate more authority than the FTC already has.

Congressional Activity in the New Administration

In light of the incursions into the FTC’s Section 13(b) authority, Congress may well expressly legislate to broaden or clarify the Commission’s authority. In the last Congress, Senator Roger Wicker (R-MS) introduced a bill that would have both allowed the FTC to bring a 13(b) suit even where the offender merely “has violated” the law, and expressly allowed for “restitution for consumer loss,” “rescission or reformation of contracts,” and “the refund of money or return of property.”67 Such an approach would, in one fell swoop, end any uncertainty about the FTC’s authority to go directly to court even for past violations and obtain monetary relief. The prospects of any such legislation are unclear, but there can be no doubt that if the Supreme Court rules in favor of AMG, some in Congress will seek to give the FTC more express authority. The trend in Shire—and even in courts with less stringent standards for injunctive relief—only adds fuel to that fire.

Back in October 2020, all five then-Commissioners urged Congress to pass legislation to “swiftly []clarify the statutory text and allow us to continue to protect consumers.”68 They warned that “13(b) is a critical tool in our enforcement mission” but that AMG and Shire were “grave” “judicial threats” to “the FTC’s ability to protect consumers.”69 With a Democratic-majority FTC and the Biden administration expected to take a forward-leaning approach on consumer protection, Congressional “clarification” would likely garner broad executive branch support.70

In February, the Subcommittee on Consumer Protection and Commerce of the Committee on Energy and Commerce held a hearing ostensibly focused on “Fighting Fraud and Scams During the Pandemic.”71 Discussion of AMG, Shire, and 13(b) dominated the hearing. Subcommittee Chair Jan- ice D. Schakowsky stated that “[u]nder 13(b), the FTC can require defrauders to provide restitution (money) to individuals who have been defrauded. Unfortunately, this authority is under assault at the Supreme Court, and the FTC may find itself deprived of a critical tool.”72 She argued that “reaffirming the FTC 13(b) authority is a bipartisan issue at the Commission as it should be everywhere.”73

While Congressional activity and interest may be easy to predict if the Court rules in AMG as anticipated, the outcome of that activity is entirely uncertain. Opening the FTC Act to amendment is likely to lead to a broader Congressional referendum on the Act as a whole, with various members of Congress seeking to amend the Act in ways unrelated to the 13(b) issues currently in dispute. For example, some members are likely to seek broader FTC rulemaking authority while others may use the opportunity to press for the transfer of powers from the agency to a new agency empow- ered to address privacy concerns or even digital markets as a whole. This will undoubtedly complicate the ability of Congress to address the relatively narrow issue teed up in AMG and leaves the future of FTC monetary—and potentially injunctive—relief in jeopardy. ●

ADDENDUM

On April 22, 2021, a day after this article was published, the United States Supreme Court unanimously decided AMG Capital Management v. FTC. That decision marks the end of the FTC’s broad exercise of Section 13(b) authority to get money back from those who violate the FTC Act—for now.

In a unanimous decision written by Justice Breyer, the Supreme Court held that the statute does not authorize the FTC to seek “equitable monetary relief such as restitution or disgorgement.” In essence, the Court decided that Section 13(b)’s reference to a “permanent injunction” means just that and no more. So, for monetary relief, the FTC is now left with its existing authority under Section 19 of the FTC Act.

While the Supreme Court settled an important issue in AMG, the law around FTC enforcement authority is in flux. Indeed, on the day before the decision, the FTC testified before Congress that “Section 13(b) is a critical tool in support of our enforcement missions, but its effectiveness is cur- rently imperiled [by AMG and further curtailments by circuit courts], and this uncertainty is hurting our ongoing enforcement efforts.” The Commission called for legislation, and a bill that would reverse the effect of AMG was introduced that same day in the House.

#### The plan derails it

Alison Jones & William E. Kovacic 20, Jones is a professor at King’s College London; Kovacic is Global Competition Professor of Law and Policy, The George Washington University Law School, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, vol. 65, no. 2, SAGE Publications Inc, 06/01/2020, pp. 227–255

D. Political Backlash

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125

The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or muted if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder.

#### Fraud crackdowns stop major terror attacks

Michael Tierney 18, George & Mary Hylton Professor of International Relations; Director Global Research Institute (GRI), “#TerroristFinancing: An Examination of Terrorism Financing via the Internet,” International Journal of Cyber Warfare and Terrorism, vol. 8, no. 1, 01/2018, pp. 1–11

2. TERRORIST FINANCING AND THE INTERNET

As mentioned, terrorists’ use of the internet has become a major concern for security officials across the world in recent years. Like many other users, terrorists have found that the internet is an invaluable tool to share information quickly, in order to disseminate ideas and link up with likeminded individuals (Jacobson, 2010; Okolie-Osemene & Okoh, 2015). In this manner, terrorists use the internet for a variety of purposes, including recruitment, propaganda, and financing. As scholars have also noted, the internet is an attractive option for extremists due to the security and anonymity it provides (Jacobson, 2010). Yet while there have been a growing number of studies completed on the ways in which terrorist organizations use the internet to recruit and indoctrinate others, there has been relatively little focus on the methods by which terrorists finance themselves through online activities. Some researchers have attempted to fill gaps in this area by broadly studying internet aspects of terrorism financing. However, research on this particular aspect of terrorism financing still appears to be lacking, with little focus on new methods of terrorist financing via the internet or a marrying of strategies to combat online financing trends available to practitioners in the field.

For instance, Sean Paul Ashley (2012) assessed the mobile banking phenomenon, which is prevalent in regions such as the Middle East and Africa, and provides extremists with the ability to easily connect to the internet and remit funds around the world. The decentralization of this kind of banking, due to the fact that brick-and-mortar facilities are not needed to conduct transactions, has allowed terrorist financiersto more efficiently move funds while avoiding detection from authorities. Other researchers,such as MichaelJacobson (2010), have studied the waysin which terrorists engage in cyber-crime to raise and move funds. For example, Jacobson (2010) found that online credit card fraud was a fairly major source of terrorist financing. By stealing a victim’s private credit information, terrorists are able to co-opt needed funds and provide support to themselves or their counterparts. Yet as James Okolie-Osemene and Rosemary Ifeanyi Okoh (2015) note, the internet is mostly used to augment and assist activities which occur in the physical world. In this way, it would appear that the internet is far more useful as a means to move funds globally in support of terrorism, rather than simply as a method to raise funds.

#### Nuclear war---cash is key

Dr. Peter J. Hayes 18, Executive Director of the Nautilus Institute for Security and Sustainability, Ph.D. in Energy and Resources from the University of California-Berkeley, Professor of International Relations at RMIT University, “Non-State Terrorism and Inadvertent Nuclear War”, NAPSNet Special Reports, 1/18/2018, <https://nautilus.org/napsnet/napsnet-special-reports/non-state-terrorism-and-inadvertent-nuclear-war/>

The critical issue is how a nuclear terrorist attack may “catalyze” inter-state nuclear war, especially the NC3 systems that inform and partly determine how leaders respond to nuclear threat. Current conditions in Northeast Asia suggest that multiple precursory conditions for nuclear terrorism already exist or exist in nascent form. In Japan, for example, low-level, individual, terroristic violence with nuclear materials, against nuclear facilities, is real. In all countries of the region, the risk of diversion of nuclear material is real, although the risk is likely higher due to volume and laxity of security in some countries of the region than in others. In all countries, the risk of an insider “sleeper” threat is real in security and nuclear agencies, and such insiders already operated in actual terrorist organizations. Insider corruption is also observable in nuclear fuel cycle agencies in all countries of the region. The threat of extortion to induce insider cooperation is also real in all countries. The possibility of a cult attempting to build and buy nuclear weapons is real and has already occurred in the region.[15] Cyber-terrorism against nuclear reactors is real and such attacks have already taken place in South Korea (although it remains difficult to attribute the source of the attacks with certainty). The stand-off ballistic and drone threat to nuclear weapons and fuel cycle facilities is real in the region, including from non-state actors, some of whom have already adopted and used such technology almost instantly from when it becomes accessible (for example, drones).[16]

Two other broad risk factors are also present in the region. The social and political conditions for extreme ethnic and xenophobic nationalism are emerging in China, Korea, Japan, and Russia. Although there has been no risk of attack on or loss of control over nuclear weapons since their removal from Japan in 1972 and from South Korea in 1991, this risk continues to exist in North Korea, China, and Russia, and to the extent that they are deployed on aircraft and ships of these and other nuclear weapons states (including submarines) deployed in the region’s high seas, also outside their territorial borders.

The most conducive circumstance for catalysis to occur due to a nuclear terrorist attack might involve the following nexi of timing and conditions:

1. Low-level, tactical, or random individual terrorist attacks for whatever reasons, even assassination of national leaders, up to and including dirty radiological bomb attacks, that overlap with inter-state crisis dynamics in ways that affect state decisions to threaten with or to use nuclear weapons. This might be undertaken by an opportunist nuclear terrorist entity in search of rapid and high political impact.
2. Attacks on major national or international events in each country to maximize terror and to de-legitimate national leaders and whole governments. In Japan, for example, more than ten heads of state and senior ministerial international meetings are held each year. For the strategic nuclear terrorist, patiently acquiring higher level nuclear threat capabilities for such attacks and then staging them to maximum effect could accrue strategic gains.
3. Attacks or threatened attacks, including deception and disguised attacks, will have maximum leverage when nuclear-armed states are near or on the brink of war or during a national crisis (such as Fukushima), when intelligence agencies, national leaders, facility operators, surveillance and policing agencies, and first responders are already maximally committed and over-extended.

At this point, we note an important caveat to the original concept of catalytic nuclear war as it might pertain to nuclear terrorist threats or attacks. Although an attack might be disguised so that it is attributed to a nuclear-armed state, or a ruse might be undertaken to threaten such attacks by deception, in reality a catalytic strike by a nuclear weapons state in conditions of mutual vulnerability to nuclear retaliation for such a strike from other nuclear armed states would be highly irrational.

Accordingly, the effect of nuclear terrorism involving a nuclear detonation or major radiological release may not of itself be *catalytic* of *nuclear* war—at least not intentionally–because it will not lead directly to the destruction of a targeted nuclear-armed state. Rather, it may be catalytic of non-nuclear war between states, especially if the non-state actor turns out to be aligned with or sponsored by a state (in many Japanese minds, the natural candidate for the perpetrator of such an attack is the pro-North Korean General Association of Korean Residents, often called Chosen Soren, which represents many of the otherwise stateless Koreans who were born and live in Japan) and a further sequence of coincident events is necessary to drive escalation to the point of nuclear first use by a state. Also, the catalyst—the non-state actor–is almost assured of discovery and destruction either during the attack itself (if it takes the form of a nuclear suicide attack then self-immolation is assured) or as a result of a search-and-destroy campaign from the targeted state (unless the targeted government is annihilated by the initial terrorist nuclear attack).

It follows that the effects of a non-state nuclear attack may be characterized better as a *trigger* effect, bringing about a *cascade* of nuclear use decisions within NC3 systems that shift each state increasingly away from nuclear non-use and increasingly towards nuclear use by releasing negative controls and enhancing positive controls in multiple action-reaction escalation spirals (depending on how many nuclear armed states are party to an inter-state conflict that is already underway at the time of the non-state nuclear attack); and/or by inducing concatenating nuclear attacks across geographically proximate nuclear weapons forces of states already caught in the crossfire of nuclear threat or attacks of their own making before a nuclear terrorist attack.[17]

### Off

#### Anti-trust pacifies the working class, buys time to mystify unsustainable accumulation, and maps competition onto subjectivity, devaluing life.

Lebow 19 [David Lebow – Lecturer on Social Studies at Harvard University and lawyer, “Trumpism and the Dialectic of Neoliberal Reason,” Perspectives on Politics 18(2):380-398, doi:10.1017/S1537592719000434]

I. Neoliberal Reason

As Michel Foucault and others have argued, neoliberalism entails far more than an economic doctrine favoring deregulated markets.4 It is a novel form of governmentality—a rationality linked to technologies of power that govern conduct, not just through direct state action but through liberty itself.5 Not isolated to the traditionally demarcated sphere of economics, neoliberal society entails a whole economic-juridical order.

The central program of neoliberal governmentality is the absolute generalization of competition as a universal behavioral norm. Whereas in liberal thought, the root principle of capitalism was exchange of equivalents, for neoliberal reason it is competition entailing inequality. The key result of market processes goes from specialization to selection. The competitive market is the exclusive site of rationality. It processes information, indicated by price, and is the only mechanism of producing knowledge, defined as what is profitably utilizable. Because consumers are free to refuse inferior goods or services, the price mechanism of the market system ensures optimal solutions and maximal satisfaction of preferences.

Liberal capitalism, as Karl Polanyi argued, required the construction of “fictitious” commodities like land and labor.6 These abstract, exchangeable factors of production had to be disembedded from concrete non-market social relations, norms, and values. Instead of merely disembedding commodities, neoliberalism intervenes to make competitive mechanisms regulate every moment and point in society. It strives to build an empire of market choice that invades every domain of life, and deposes all other social, political and solidaristic institutions and values.

Neoliberalism does not allege that markets are natural; competition must be constructed. Rather than endorsing laissez-faire overseen by a night watchman, it stipulates a strong state engaged in permanent vigilance, activity, and intervention to maintain artificial competition. It must not plan outcomes, which would upset the market’s innate rationality, and must be insulated from political disturbances. Economic interventionism leads down the road to serfdom; fascism and unlimited state power are its necessary results. A “minimum of economic interventionism” on the “mechanisms of the market” must be accompanied by “maximum legal interventionism” on the “conditions of the market.”7 Fixed, formal rules make up an economic constitution that inhibits planning, repulses political disruptions, and impartially safeguards competition. The state is the executor of the market and growth is the basis of public legitimacy. Governance depoliticizes public power, promotes ostensibly post-ideological technical problem-solving by experts, and relies on “best-practices” that dissolve the distinction between public and private organization.8

Unlimited generalization of competition yields an enterprise society in which calculations of supply/demand and cost/benefit become the model of all social relations. Neoliberal reason renders homo economicus, based on this model of the enterprise, the exhaustive figuration of human subjectivity. The center of economic thought shifts from labor and processes of production, exchange, and consumption to human capital and rational decision-making under conditions of scarcity. Capital is everything that can generate future income; wages are reconceived as income from capital. Labor is no longer comprehended as a commodity exchanged for a wage, but as a combination of human capital (the worker’s education and abilities) and the income stream it generates. This neoliberal subject is an aggregate of human capital who invests in his own income-generating abilities.

Neoliberalism replaces the invariant identity of the moral person as a rights-bearing citizen with a formally empty receptacle filled up through enterprising choices. It brushes aside models of freedom as self-rule achieved through moral autonomy or popular sovereignty.9 In the neoliberal “democracy of consumers,” individual consumers together constitute the sovereign that monopolizes the issuance of legitimate commands.10 Sovereign will is expressed not through political channels, but by choices in the “plebiscite of prices.”11 Whereas producers have particular interests like protectionism, consumers have a consensual and common interest; all favor the impartial functioning of market processes. In the neoliberal free society, consumers exercise their right to choose in complete independence.

II. From Keynesian State Capitalism to Neoliberal Deregulation

Situating the 2008 crisis in a historical account of American political and economic development clarifies its broader significance. The early twentieth-century Progressives were disdainful of what they took to be the chaos and waste of fin de siècle laissez-faire society. They strove to build a new American state that would replace the structural and rights-based formalisms of the nineteenth century with direct democracy and expert administration. It took the Great Depression and New Deal to bring into full bloom the Progressive commitment to pragmatic rationality. Thereafter, the “policy state” was authorized to pursue designated social goals and develop the means to accomplish them.12 The slew of New Deal innovations included state oversight of labor negotiations, invigorated antitrust, Keynesian countercyclical deficits to stimulate demand and increase purchasing power, an expansive public sector sheltered from the business cycle, aggressive banking regulation, and social insurance. Regulation and redistribution ensured the conditions necessary for an economic system based on capital accumulation, private property, and corporate profit to endure.

To many, the differences between the New Deal and Nazi political economies appeared less significant than their common response to monopoly capitalism. Both erased boundaries between state and society by politicizing the private sphere and authorizing public bureaucracies to rationalize crisis-prone economies. Frankfurt School member Friedrich Pollock suggested that this common “state capitalism” had solved the contradiction between the forces and relations of production, and thus overcome the economy’s crisis tendencies. It seemed to him that management had become merely technical and “nothing essential” had been “left to the laws of the market.”13 Worries abounded that the private law sphere of property and contract was necessary for individual freedom. Despite salient differences between Nazi and New Deal state capitalism, many feared that intervention into society was a waystation to domination. Unease about the specter of American despotism motivated development of mechanisms to ensure that interventionism did not devolve into arbitrary rule.14 Expertise was one justification and limitation of the policy state. Authority could be safely delegated to a new corps of public-spirited administrators because their scientific knowledge would not only make them effective, but also counsel restraint. Enduring misgivings led later to new laws of administrative process. The procedural state was legitimated by its defenders as being a substantively value-neutral and instrumentally rational machine serving goals set by society. Regulatory decision-making was shunted into the abstruse procedures of courtrooms and bureaucracies. Defenders of the state emphasized that its processes of allocating authority were neutral, impartial, and open to all. The balanced accommodation of all interest groups seeking to exercise influence would yield an equilibrium corresponding to the public interest.15

The intermeshing of state and society through interest groups, agencies, and professionalized parties marginalized the public. The sovereign public opinion that Progressives had hoped would rationalize government gave way to the rationality supposedly inherent in processes of public law, public-private negotiation, and regulated markets. The state was endowed with a diffuse legitimacy in exchange for a growing economy, broad distribution, and ongoing household capacity to consume.16 The Keynesian welfare settlement pacified the working class, protecting the market economy from more radical political pressures. Newly available, mass-produced commodities encouraged leveled-down notions of citizenship as welfare clientelism and privatistic consumption. As the state expanded and routinized, the initial politicization of private property relations through public intervention developed into depoliticized economic management by lawyers and social scientists organized by administrative and judicial processes.

The terms of the social contract preserving the coexistence of capitalism and democracy had been set. In exchange for a pacified citizenry and depoliticized regulatory authority, the policy state promised to deploy instrumental reason to sustain both capital accumulation and widely distributed capacity to consume (supported, always, by the exclusion of African Americans). During the decades of postwar growth, these twin responsibilities seemed attainable and compatible. Capitalism functioned smoothly enough and potentially delegitimating inequality was clipped by inflation, tax-based welfare, and collectively negotiated wages. But in the late 1960s and early 1970s, weakening growth, stagflation, trade deficits, and the collapse of Bretton Woods revealed that state capitalism had not solved the problems of economics. As the Great Depression had enabled construction of the instrumentally rational policy state, economic disturbances in the 1970s opened the breach into which neoliberal reason entered to reconfigure the political economy. Rather than shielding rational policy-making from political pressure and assuring broadly distributed welfare, neoliberalism promised growth driven by depoliticized markets freed from regulation and downwards redistribution. Believing in the optimal rationality of competitive markets, neoliberals sought to reinvigorate capital accumulation through deregulation, lowered taxes, financialization, privatization, and market expansion.

Liberating accumulation from the restrictions and obligations incurred under state capitalism might have imperiled capitalism’s peace treaty with democracy. For deregulation to proceed without impairing the system’s legitimacy, the quid pro quo—depoliticization for consumption—had to continue. Over the ensuing decades, as Wolfgang Streeck explains, the state “bought time” by finding new ways to generate illusions of widely distributed prosperity that prolonged the capacity of the lower and middle classes to consume.17 Each successive attempt exhausted itself, leading to new and escalating disturbances. In the 1970s, inflation safeguarded social peace by compensating workers for inadequate growth until stagflation ended this mode of buying time. A subsequent reliance on public debt enabled the government to pacify conflict with borrowed money. Rising debt and balking creditors delimited this phase, which was brought to a definitive close with the Clinton administration’s social spending cuts and balanced budgets. In a final stage that dawned in the 1980s but grew increasingly paramount over time, debt-based support of purchasing power was privatized. Household spending was financed through mortgages, student loans, and credit cards. This “privatized Keynesianism” buoyed consumption up through 2008, despite cuts to social spending, falling wages, and tightening employment markets.18

Each device for upholding spending maintained the legitimacy of the depoliticized political economy, even as liberalization continued to strip the wage-dependent population of regulatory and redistributive safeguards. The end of the inflation era brought structural unemployment and weakened trade unions. The passing of the public debt regime meant cuts to social rights, privatization of social services, and a trimmed public sector. Growing private debt enabled people to hold on despite lost savings, and rising under- and unemployment. At every step, the neoliberal project was “dressed up” as a consumption project.19 Continuing consumption ensured legitimacy long enough to enact total transformation of the political economy.

The state could not buy time indefinitely. The 1970s had already witnessed the beginning of the transition from a manufacturing, production-oriented economy that exported surpluses to an import-based, finance and services economy focused on consumption. As the United States went from creditor to debtor, a system of “balanced disequilibrium” took hold.20 With impunity granted as the world’s reserve currency, the United States ran mounting budget and trade deficits. To finance them, it absorbed surplus capital from abroad, much of which wended its way to Wall Street. Banks used these profits to extend credit to the working- and middle- classes. Household debt funded consumption of imported goods, returning the surplus capital abroad, and completing the circuit of global trade. This system depended on the unsustainable condition of ever-increasing debt-based consumption. Consumption was notoriously reinforced by secondary markets in what was essentially private money (securitized derivatives and collateralized debt obligation) that was much riskier than assumed. Because increasingly irresponsible lending was integral to continuing the consumption that stabilized the macroeconomic system, it became a sort of vicious collective good that progressively magnified the scale of the inevitable crash.21 When in 2008 the debt finally proved unserviceable and the housing bubble burst, the private money disappeared and the disequilibrated global economic system fell into crisis.

Consumption based on private debt had provided an unstable bridge over the yawning inequality brought about by deregulation, financialization, globalization, and the diminished welfare state. When the 2008 crisis dried up credit, it revealed a divided “dual economy.”22 On one side is the primary sector of elite, highly-educated professionals who are collected in coastal urban centers and tied in to corporate management, technological innovation and oversight of global capital flows. On the other is the secondary sector of low-skilled workers primarily fixed in the heartland, for whom deregulated competition has brought under- or unemployment, job instability, depressed wages, exploding debt, and diminished prospects.

Unable to buy more time, the state’s breach of the postwar social contract has been exposed. The neoliberal system of capital accumulation was entrenched at the expense of broad and sustainable consumption. The results have been the politicization of defrauded citizens and a political economy plunged into legitimation crisis. Time has belied the premature conclusion that contradiction and crisis potential had been overcome by state capitalism. Contradiction was relocated into cross-cutting imperatives for the state to enable capital accumulation and distribute consumption. In hindsight, we find only a window of stabilization of an enduring crisis potential built into capitalist political economy. As Nancy Fraser puts it “on the one hand, legitimate, efficacious public power is a condition of possibility for sustained capital accumulation; on the other hand, capitalism’s drive to endless accumulations tends to destabilize the very public power on which it relies.”23 The political fallout from the 2008 crisis marks the end of the postwar social contract that had established conditions ensuring the continued coexistence of capitalism and democracy.

#### Cap causes extinction and structural violence.

Allinson et al 21 [Jamie Allinson is Senior Lecturer in Politics and International Relations at Edinburgh University and author of The Age of Counter-revolution. China Miéville is the author of a number of highly acclaimed and prize-winning novels including October: The History of the Russian Revolution. Richard Seymour is the author of numerous works of non-fiction, His writing appears in the New York Times, London Review of Books, Guardian, Prospect, Jacobin. Rosie Warren is an Editor at Verso and the Editor-in-Chief of Salvage. All are writing for the Salvage Collective. “The Tragedy of the Worker: Toward the Proletarocene.” Introduction. July 2021. Verso EBook. ISBN: 9781839762963 //shree]

This is the question that vexed us as we set out to write The Tragedy of the Worker. From the vantage point of the present, the history of capitalist development is, as Marx expected, the history of the development of a global working class, the proletarianisation of the majority of the world’s population. But the very same process of that development has brought us to the precipice of climate disaster. Our position, to recall Trotsky’s rationalisation of War Communism in 1920, is in the highest degree tragic.

It is now clear that we will pass what scientists have long warned will be a tipping point of global warming, accelerating the already catastrophic consequences of capitalist emissions. How do we imagine emancipation on an at best partially habitable planet? Where once communists imagined seizing the means of production, taking the unprecedented capacities of capitalist infrastructures and using them to build a world of plenty, what must we imagine after the apocalypse has befallen us? What does it mean that as capitalism has become truly global, the gravediggers it has created dig not only capitalism’s grave, but also that of much organic life on earth?

Our answers to these questions remain rooted in the politics of revolutionary communism. Our stance is not based on the fantasy of a homeostatic nature that must be defended but on the critique of the capitalist metabolism – the Stoffwechsel- that must be overthrown. Earth scientists are accustomed to speak in terms of ‘cycles’ by which substances circulate in different forms: the water cycle, the rock cycle, the nitrogen cycle, the glacial-interglacial cycle, the carbon cycle, and others. One way of registering the catastrophe of climate change is to see these cycles – most of all, but not solely, the carbon cycle – as disordered, under- or over-accumulating. But this is to ignore the more fundamental circuit of which these now form epicycles, like Ptolemy’s sub-orbits of the heavenly bodies: the circuit of capital accumulation, M-C-M′.

This circuit accumulates profit and produces death. Neither is accidental. It is for this reason that the debates that capitalist ruling classes permit among themselves on ‘adaptation’ versus ‘mitigation’ take place on false premises. What is to be mitigated is the impact of climate change on accumulation, rendered through the ideology of ‘growth’ as something that benefits everyone. What we are to adapt to are the parameters of accumulation, sacrificing just enough islands, eco-systems, indigenous – and non-indigenous – cultures to maintain its imperatives for a period of time until new thresholds must be crossed, and new life sacrificed to the pagan idol of capital. Already, capitalist petro-modernity builds a certain quantum of acceptable death into its predicates: at the very least, the 8.7 million killed by fossil fuels each year according to Harvard University are considered a price worth paying for the stupendous advantages of fossil capital. And the sky can only keep going up, as deforestation, polar melt, ocean acidification, soil de-fertilisation and more intense wildfires and storms tear the web of life into patches. If the necropolitical calculus of the Covid-19 pandemic appears crass, just wait until its premises are applied to climate catastrophe.

#### Vote Neg for anti-capitalist commons.

Rose 21 [Nick. PhD in Political Ecology from RMIT University. Executive Director of Sustain: The Australian Food Network. From the Cancer Stage of Capitalism to the Political Principle of the Common: The Social Immune Response of “Food as Commons.” Int J Health Policy Manag 2021. 3-31-21. DOI: 10.34172/ijhpm.2021.20 //shree]

Silvia Federici provides a longer historical perspective, noting that ‘commoning is the principle by which human beings have organised their existence for thousands of years;’ and that to ‘speak of the principle of the common’ is to speak ‘not only of small-scale experiments [but] of large-scale social formations that in the past were continent-wide.’87 Hence a commons-based society is neither a utopia or reducible to fringe projects, and the commons have persisted despite the many and continuing enclosures, ‘feeding the radical imagination as well as the bodies of many commoners.’87 Federici acknowledges that commons and practices of commoning are diverse, that many are susceptible to cooptation and many are consistent with the persistence of capitalism; indeed some, such as charities providing social services (including foodbanks) during the years of austerity budgets in the United Kingdom (2010-2015), reinforce and stabilise capitalism.87 What matters to Federici is the character and intentionality of the commons as anti-capitalist, as ‘a means to the creation of an egalitarian and cooperative society…no longer built on a competitive principle, but on the principle of collective solidarity [and commitments] to the creation of collective subjects [and] fostering common interests in every aspect of our lives.’87

Federici’s analysis resonates with the political thought and proposals developed by Dardot and Laval in their 2018 work, ‘On Common: Revolution in the 21st century.’11 For Dardot and Laval, the common is likewise understood as a principle of political struggle, a demand for ‘real democracy’ and a major driving force behind the emerging articulation of a political vision and programme that transcends and overcomes the straitjacket logic of neoliberal ideological hegemony and its ‘policy grammar’ which appears to foreclose all alternatives and lock us forever into a capitalist realism in which ‘it is easier to imagine the end of the world than it is to imagine the end of capitalism.’89 Eschewing Bollier’s ‘triarchy’ of a market/state/ commons coexistence, Dardot and Laval argue for a politics of the common based on an engaged citizenry that directly participates and deliberates in all decisions which impact it, and in the process not merely transforms the institutions responsible for the management of services and allocation of resources, but creates new institutions and new ways of being in the world.11

Dardot and Laval describe this form of politics as ‘instituent praxis’: the common, they argue, is ‘not produced but instituted.’11 This acknowledges the conventional understanding of Ostrom, Bollier and others of ‘the commons’ as residing in the rules – the laws – that a community establishes for the collective management and use of shared resources, but extends it much further and in a more radical direction. The essence of the commons, they argue, is not in the goods per se such as land or a forest or a seed bank ‘held in common,’ but rather in the process of their establishment as well as the ongoing negotiation that will surround their use and governance. Hence, Dardot and Laval distinguish the commons from the ‘rights’ tradition of property, arguing that ‘the commons are above all else matters of institution and government…the use of the commons is inseparable from the right of deciding and governing. The practice that institutes the commons is the practice that maintains them and keeps them alive and takes full responsibility for their conflictuality through the coproduction of rules.’90 To ‘institute’ in this context should not be misunderstood as ‘to institutionalise [or] render official;’ rather it is ‘to recreate with, or on the basis of, what already exists.’ 90 This messy, conflictual and evolving process is what Dardot and Laval insist will ultimately bring about a revolution, not in the form of a violent uprising or insurrection, but rather through the ‘reinstitution of society’ via the transformation of politics and economy from its current state of ‘representative oligarchy’ to full participatory and deliberative democracy.11 Such a vision is premised on a mass politicisation of society; in effect a return of mass popular political contestation and a turn away from the postpolitical era of the neoliberal consumer.91-92

## Opiods Adv

### Fails

#### Antitrust fails---lobbyists and judges ruin enforcement

Jones and Kovacic 20 [Alison Jones and William E. Kovacic, Alison Jones is Professor of Law at King’s and a solicitor at Freshfields Bruckhaus Deringer LLP; William Evan Kovacic is an American lawyer and legal scholar who was a commissioner of the U.S. Federal Trade Commission from 2006 to 2011. Kovacic is a professor at George Washington University Law School and the director of their Competition Law Center, "Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy", The Antitrust Bulletin 2020, Vol. 65(2) 227-255 [https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884]LPAL](https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884%5dLPAL)

\*this card has been modified for ableist language

-firms lobby congress to stop any new FTC enforcement---control of their budget/political sway

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125 The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or ~~muted~~ [silenced] if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder. Imagine, for a moment, that the DOJ and the FTC launch monopolization cases against each of the GAFA giants. Among other grounds, these cases might be premised on the theory that the firms used mergers to accumulate and protect positions of dominance. The GAFA firms have received unfavorable scrutiny from legislators from both political parties over the past few years, but the current wave of political opprobrium is unlikely to discourage the firms from bringing their formidable lobbying resources to bear upon the Congress. It would be hazardous for the enforcement agencies to assume that a sustained, well-financed lobbying campaign will be ineffective. At a minimum, the agencies would need to consider how many battles they can fight at one time, and how to foster a countervailing coalition of business interests to oppose the defendants.

### AT: Opoids/Cartels IL---1NC

#### Drugs not key to cartels or violence---they’ve diversified.

Stephanie Leutert 16, Director of the Mexico Security Initiative at the University of Texas at Austin, “Fewer Drugs Doesn't Necessarily Mean Less Violence,” 10/20/16, https://www.lawfareblog.com/fewer-drugs-doesnt-necessarily-mean-less-violence

The article has prompted a range of responses, most of which argue that the blame should be placed squarely with prohibition policies rather than users (see here and here). But there’s an antecedent problem: the piece’s central premise that if Americans would just use fewer drugs, we’d see less violence.¶ If only it were so straightforward.¶ Mexico’s organized criminal groups are no longer mere drug traffickers, whose singular revenue streams would disappear if Americans kicked their drug habits. Instead, over the past decade, Mexico’s criminal groups have moved rapidly into a wide range of illicit activities, such as extortion, stealing oil, kidnapping, and taxing migrant smugglers. They’ve even gained a foothold in what used to be informal or even legal markets: pirated CDs, limes and avocados, and used cars, for example.¶ These are not just drug cartels any more. Most of them are diversified non-industrial criminal conglomerates of a sort. Think Samsung, only with guns and murder instead of heavy industry.¶ To really understand the real world effect that fewer drug dollars would have on Mexico’s violence, we’d need to know how much money these groups make overall and how much of it comes from drugs. Sound simple? It shouldn’t. Measuring any illicit market or activity is notoriously difficult and imprecise.¶ Plus if figuring out even the total amount of drug money is tough, trying to decipher how much cartels reap from their other illicit activities is even harder. Many of these activities (like extortion and kidnapping) are never reported and there are few indicators or reliable surveys to get a sense of the true and up to date scope. But lucky for us, analysts and scholars haven’t stopped trying, and their estimates help us get a sense of these activities importance.¶ Let’s take the Knights Templar cartel in Michoacán as an example. Back in their violent heyday a few years ago, the group’s number one revenue source was not the methamphetamines or cocaine that they trafficked, but rather the state’s mining industry. This was followed by their extortion of other industries, with the group illegally taxing an estimated 85 percent of Michoacán businesses, and then illegal logging. This means that stripping the Knights Templar of any drug revenues would have hurt the group’s bottom line, but certainly wouldn’t have been a coup de grace.¶ This brings us to one more important factor to consider when thinking about the effect of decreased drug money on violence in Mexico: revenue distribution.¶ Some of the drug money filters back to Colombia or criminal groups in other countries, but the vast majority goes to Mexican drug traffickers, more specifically: the Sinaloa Cartel and increasingly the Cartel Jalisco New Generation (CJNG). This means that the effects from dried up drug money would hit these two big groups particularly hard. And as the New York Times’ op-ed notes, this is a very good thing.¶ However, as with the example of the Knights Templar, there are at least forty or more smaller groups operating in Mexico that lack a serious foothold in international drug trafficking networks. Instead, they also rely on the other criminal activities mentioned above to help line their pockets. And unfortunately, these groups are also to blame for large chunks of Mexico’s violence.

### A2: Kim ILX Card

#### Their Kim internal link ev does not say demand for opiods would end because of the plan

### A2: Instability

#### No chance of great-power draw-in

---it’s unimportant strategically, has no money, US isn’t reliant on them for anything and there’s no way Biden who is pulling out of wars would start another messy one over Mexico

Malamud & Schenoni 20, \*Andrés, a senior research fellow at the Institute of Social Sciences of the University of Lisbon, Portugal. Twitter: @andresmalamud Luis L., upcoming research fellow at the University of Konstanz, Germany. (9-10-2020, "Latin America Is Off the Global Stage, and That's OK", *Foreign Policy*, https://foreignpolicy.com/2020/09/10/latin-america-global-stage-imperialism-geopolitics/)

But well into the 21st century, what if Latin America is so unimportant it isn’t even on the menu? Compare it with other decolonized, developing regions. Today, Africa is home to a fifth of humanity, and demographic trends suggest it might become a serious driver of global economic growth in a couple of decades. On the flipside, extreme poverty makes it a ticking bomb, with millions of people just a boat away from aging Europe. This means that, for better or worse, Africa is becoming increasingly geopolitically relevant in the eyes of the great powers.

This assessment applies even more clearly to Asia and the Middle East. Asia is the current driver of global economic growth and hosts the only challenger to American hegemony, which is winding up in quarrels with all of its neighbors. The Middle East has the largest energy reserves in the world and remains the epicenter of violent political conflict. In contrast, Latin America is declining in both economic weight and political relevance. It offers less promise and poses a smaller threat, and therefore is unlikely to be either courted or feared. Yet, you may think, it could still be eaten.

What in Latin America could still make the great powers’ mouth water? Early in the unipolar moment, the region was still relatively special to the United States thanks to the combination of energy, migration, and cocaine. Oil from Venezuela, migrants from Mexico, and drugs from Colombia were the main concerns. Today, the United States is close to self-sufficiency in both energy and drugs, and Mexico is retaining not only its own population but Central American refugees as well.

Direct intervention has long become unnecessary. Historically the United States has intervened, either overtly or covertly, to prevent extra-regional powers from meddling in the Western Hemisphere. But this is not the case with China—and is unlikely to be. In 2016, one of us published a collective study showing how Beijing filled the void left by a diminished U.S. presence in the region without threatening U.S. strategic interests. Since then, despite heightened rhetoric about a “troika of tyranny” (of Cuba, Nicaragua, and Venezuela) backed by Beijing, or perhaps because of it, China has turned inward and backed off on its economic statecraft.

#### Alt causes to instability, but no impact.

Seelee and Shirt 10– **\***director of theMexicoInstitute at the Woodrow Wilson International Center for Scholars AND \*\* fellow at the center and an associate professor at the University of San Diego (Andrew Selee, David Shirk, 3/27/10, " Five myths about Mexico's drug war ", Washington Post, http://www.washingtonpost.com/wp-dyn/content/article/2010/03/26/AR2010032602226.html)

The country has certainly seen a big rise in drug violence, with cartels fighting for control of major narcotics shipment routes -- especially at the U.S. border and near major seaports and highways -- and branching into kidnapping, extortion and other illicit activities. Ciudad Juarez, in particular, has been the scene of major battles between two crime organizations and accounted for nearly a third of drug-linked deaths last year. But the violence is not as widespread or as random as it may appear. Though civilians with no evident ties to the drug trade have been killed in the crossfire and occasionally targeted, drug-related deaths are concentrated among the traffickers. (Deaths among military and police personnel are an estimated 7 percent of the total.) A major reshuffling of leaders and alliances is occurring among the top organized crime groups, and, partly because of government efforts to disrupt their activities, violence has jumped as former allies battle each other. The bloodshed is also geographically concentrated in key trafficking corridors, notably in the states of Sinaloa, Chihuahua and Tamaulipas. While the violence underscores weaknesses in the government's ability to maintain security in parts of the country, organized crime is not threatening to take over the federal government. Mexico is not turning into a failed state.

#### We don’t have jurisdiction over Mexico – we can’t prosecute people across US borders

### A2: Readiness

#### There’s no internal link to this in the 1AC---if they read one, we’ll read defense in the block.

## Econ Adv

### Turn

#### Changing the legal standards of antitrust spills over to crush otherwise surging growth.

Thierer ’21 [Adam; February 25; Senior Research Fellow with the Mercatus Center at George Mason University; The Hill, “Open-ended antitrust is an innovation killer,” <https://thehill.com/opinion/technology/540391-open-ended-antitrust-is-an-innovation-killer>]

Unfortunately, the calls for more bureaucracy and regulation emanating from all corners of the political world could have an unintended consequence: discouraging the sort of vibrant innovation and consumer choice that made America’s tech companies household names across the globe.

Sen. [Amy Klobuchar](https://thehill.com/people/amy-klobuchar) (D-Minn.) is leading one charge. Klobuchar, who chairs the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, [recently introduced](https://www.klobuchar.senate.gov/public/_cache/files/e/1/e171ac94-edaf-42bc-95ba-85c985a89200/375AF2AEA4F2AF97FB96DBC6A2A839F9.sil21191.pdf) the “Competition and Antitrust Law Enforcement Reform Act.” This sweeping measure seeks to expand the powers and budgets of antitrust regulators at the Federal Trade Commission and the Department of Justice. It also includes new filing requirements and potentially hefty civil fines.

The most important feature is the proposed change to the legal standard by which regulators approve business deals. It would allow the government to stop any deal that creates an “appreciable risk of materially lessening competition,” and it also defines exclusionary behavior as, “conduct that materially disadvantages one or more actual or potential competitors.”

These may sound like simple, semantic tweaks, but – much like some of the other policy ideas currently circulating – they would upend decades of settled law and create a sea change in U.S. antitrust enforcement. This change could undermine business dynamism, innovation and investment in ways that inhibit the global competitiveness of U.S. businesses.

Critics of merger and acquisition (M&A) activity by large tech firms include not only Sen. Klobuchar but also Republicans such as Sen. [Josh Hawley](https://thehill.com/people/joshua-josh-hawley) (R-Mo.). Hawley recent [offered an amendment](https://www.axios.com/josh-hawley-big-tech-merger-ban-1467081d-216c-45a2-9d09-9416dfbde330.html) to a budget bill that would preemptively prohibit mergers and acquisitions by dominant online firms. Klobuchar and Hawley believe that M&A skews the market in favor of today’s largest firms, entrenching their market power and discouraging innovation.

History teaches a different lesson. Consider DirecTV and Skype, both once considered innovative market leaders in their respective fields of satellite TV and internet telephony. Both firms stumbled, however, and they might not even be with us today without creative business deals. DirecTV has been partially or fully controlled by Hughes Electronics, News Corp., Liberty Media and now AT&T. Skype has swapped hands multiple times, moving from eBay, to a private investment firm and now to Microsoft.

These were complex deals, and some didn’t work, leading to divestitures. But each was a learning experience that illustrated how dynamic media and technology markets can be with firms constantly searching for value-added arrangements that serve their customers and shareholders. If we make this type of activity presumptively illegal, we’re imagining that government bureaucrats are better suited to make these calls than businesspeople and the consumers who choose whether or not to buy the product.

Worse yet, legal tests like those Klobuchar proposes – “conduct that materially disadvantages potential competitors” – are remarkably open-ended and could be easily abused. The system will be gamed by opponents of deals for business reasons. They will claim that their own failure to attract investors or customers must all be the fault of more creative rivals. That’s a recipe for cronyism and economic stagnation.

Those who worry about today’s largest tech giants becoming supposedly unassailable monopolies should consider how similar fears were expressed not so long ago about other tech titans, many of which we laugh about today. Just 14 years ago, headlines [proclaimed](https://www.technewsworld.com/story/55185.html) that “MySpace Is a Natural Monopoly,” and [asked](https://www.theguardian.com/technology/2007/feb/08/business.comment), “Will MySpace Ever Lose Its Monopoly?” We all know how that “monopoly” ceased to exist.

At the same time, pundits [insisted](https://www.marketwatch.com/story/apple-should-pull-the-plug-on-the-iphone) “Apple should pull the plug on the iPhone,” since “there is no likelihood that Apple can be successful in a business this competitive.” The smartphone market of that era was viewed as completely under the control of BlackBerry, Palm, Motorola and Nokia. A few years prior to that, critics lambasted the merger of AOL and TimeWarner as a new [corporate “Big Brother”](http://www.ojr.org/ojr/workplace/1017966109.php?__cf_chl_jschl_tk__=67a5f6a101935b8e3586ca48216d31ba6d4e03de-1612467283-0-AXvbGCtUx-p_N4T-8_2m8OHezQUhQ9kelg9-pVuD6IzKvFfXrllJujU9ERvjqjyIsAeCovUw9bfZqq75_NYasBM87SnQT_027hDJOhjXeowzK1QQH_7vcmr1tS4XgCGC_NNx6UGbAvVgcJNFhSkqkVKKeRJ-BjdDA7Vus-gwmr7wQXcS7KKfTtHyqxdRfureL9alpZHU2IJcbbdYaZpTjTrfcJHCKa8pIZcdiScjaRJmON9X1Ip20Vuv7tyDHbZSvcrn88WrY_9N_qBpKvZhQ4PAe90w5Fx5iHjjNIzoNMKSpToTFGLbPdqawgge9PVubSQbkS7xXDXxCBMA2Sh-Y_U) that would decimate digital diversity and online competition.

Today, we know these tales of the apocalypse ended up instead becoming case studies in the continuing power of “creative destruction.” New innovations and players emerged from many unexpected quarters, decimating whatever dreams of continued domination the old giants once had.

Today’s biggest players face similar pressures, and it’s better to let rivalry and innovation emerge organically, not through the wrecking ball of heavy-handed antitrust regulation.

#### Increased antitrust destroys profits

Andrew Baum 21, Professor of Practice, Saïd Business School, University of Oxford. Chairman of Newcore Capital Management LLP. Previous Honorary Professor of Real Estate Investment and Fellow of St John’s College at Cambridge, 6-7-2021, "Pharma investors should brace for pricing and antitrust action," Financial Times, https://www.ft.com/content/516e23be-1630-42c5-bf2b-affa159779e6

But the true risk to **pharma** in response to unacceptable drug pricing may come from elsewhere — namely, growing **bipartisan support** to increase industry antitrust scrutiny and penalties.

Even under the Trump administration, there were signs that the US Federal Trade Commission was taking a more aggressive antitrust approach. US drugmaker AbbVie’s $63bn deal to buy Allergan, the Irish-domiciled maker of Botox, required a second request for information from the FTC and received a narrow 3-2 vote for approval by commissioners last month.

Bristol-Myers Squibb struck one of the largest pharmaceutical deals in history when it agreed to buy biotech company Celgene in 2019 for $90bn. However, it was required to divest a treatment for psoriasis for $13.4bn.

Such intensifying antitrust scrutiny is global too. The acting chair of the FTC announced in March a working group with the EU, UK and Canadian antitrust agencies to seek to improve antitrust analysis for the industry given the correlation between historic industry consolidation and rising drug prices.

Eight US **antitrust bills** targeting the pharmaceutical industry have been recently introduced, addressing a gamut of alleged anti-competitive activity. These cover areas such **pay**ing **for** the **delay** of launches of generic products and “**product hopping**”, where companies make minor changes to extend the exclusivity of drugs.

Among the Senate moves for greater FTC enforcement, the most pressing concern for the industry comes from those covered in Senator Amy Klobuchar’s proposed **Competition and Antitrust Law Enforcement Reform Act**. If enacted, the bill would mean many proposed biopharma deals would be presumed to be **anti-competitive**, with an obligation on the sponsors to disprove. The bill would also **lower the bar** in demonstrating how a given acquisition would be deemed **anti-competitive**.

Given ongoing waves of patent expirations, these proposals **could n**o**t have a come at a worse time** for the industry. Between now and the end of the decade, a **record breaking** amount of more than $150bn of US major pharma revenues will be **exposed to generic** or biosimilar **competition**.

Under an extreme scenario without recourse to future M&A, many pharma companies would face prolonged periods of earnings decline, potential **dividend cuts** and arguably **derating**.

### A2: Chinese Lead Bad---1NC

#### Their China lead bad card doesn’t say anything---but here’s defense anyway that post-dates by 5 years

Carlo Catapano 21, PhD Candidate in International Studies at the University of Roma Tre, MSc in International Relations of the Americas at UCL, “Book Reviews: Unrivaled: Why America will Remain the World’s Sole Super-power, by Michael Beckley. Ithaca: Cornell University Press, 2021, pp. 231.”, Interdisciplinary Political Studies, Volume 7, Number 1, p. 249-252

Moving on to the emerging rivalry between China and the United States, Beckley acknowledges that the Asian giant is its most likely challenger. However, his detailed evaluation of Beijing’s economic and military resources leaves no room for doubts: China lags behind the US on almost every net indicator, and the gap between the two is unlikely to vanish any time soon. This conclusion is surprising if one considers the constant references – in academia and the media – to China’s rise and the Asian century. Beckley points out the weaknesses of the Chinese economy (Chapter 3), the hidden costs for a large, populous and developing country that are not included in gross estimates, and the various advantages that the US economic system still owns despite the limited growth of the post-2008 period.

Similarly, he compares (Chapter 4) the net military capabilities of the two powers by subtracting, for example, the costs to maintain security at home from their overall military assets. Also, he addresses the geopolitical factors that separate the US and Chinese ability to project their military power abroad. From this analysis, it emerges that China’s position is severely constrained by the high costs paid to assure its internal security and the defense of its national borders as well as by the welfare costs associated to the large number of troops composing the People’s Liberation Army. Beckley argues that China’s rising military capabilities are also constrained by the continued presence of US outposts in the region and the improvements made by China’s neighbors to their own military forces. Overall, this assessment leaves few chances for Beijing to obtain the regional hegemony that it would need to challenge the US on a global scale.

Beckley’s analysis also indicates the path forward (Chapter 5), starting from the rejection of the theories usually employed to predict the fate of US power (balance-of-power theory and “convergence” theory). All indicators suggest that the US will retain its role of leading global power in the coming years, notwithstanding China’s uninterrupted rise. Beckley is eager to point out, however, that this conclusion should not be confused with the praise of American superiority or invincibility. At no point, does his analysis suggest that Washington’s primacy is uncontestable or destined to last forever. Instability with weaker countries, unnecessary wars, internal polarization and disunity, can all produce unpredicted losses and undermine the position of the most powerful country in the world (Chapter 6). Beckley’s argument, therefore, consists in a re-evaluation of the sources of power that have guaranteed the US primacy since the end of the Cold War. Those same sources still place the United States in a category of its own, apart from the other great powers of the system. This book’s claim, in the end, is about the duration of the unipolar era, which it predicts will last more than usually expected, not about the infallibility or moral virtues of US power.

A few years later on the publication of this book, its central tenets are even more relevant. Events such as Trump’s nationalist policies, the trade war with China, the COVID-19 outbreak seem to have accelerated history and the shift away from the post-Cold War unipolar configuration. Beckley’s work, however, invites to reject simplistic predictions about the dismissal of US primacy. The decline in Washington’s global influence as well as the retrenchment from its international responsibilities do not necessarily mean that its net position in terms of material capabilities has collapsed or that a condition of power parity with China has finally emerged. Even if outcomes are not favorable to US interests, it does not mean that US power has vanished. This is a relevant reminder for policymakers in both Washington and Beijing.

### A2: Ilx

#### High health costs doesn’t hurt economy

Thomas **Miller –** 200**9**

J.D, Duke University School of Law; “Squaring Healthcare with the Economy,” American Enterprise Institute, 12-8-2009; <http://www.aei.org/publication/squaring-healthcare-with-the-economy/>, DOA 7-5-17-SH)

Leading versions of health care legislation before Congress this year remain more likely to weaken U.S. economic competitiveness, at the margin, than to improve it. The **direct impact of higher health care costs on the competitiveness of U.S. businesses has been overstated by interest groups** either looking to transfer their immediate burdens to others or to enact broader health policy agendas unrelated to competitiveness. **Health benefits are largely substitutes for other forms of labor compensation.** Hence **U.S. firms have performed well** [in the past], despite rising levels of health care costs, because **high levels of productivity** and a favorable **investment climate were** (and remain) much more **important factors in determining competitiveness.** As CBO Director Douglas Elmendorf concluded in congressional testimony earlier this year, “[T]he costs of providing health insurance to their workers are not a competitive disadvantage for U.S.-based firms.” We should do better in improving the value of health care services. However, the pending bills mostly promise more care and more insurance, with little essential health reform in return. Partially shifting the high cost of health benefits from one set of pockets–employer payrolls–to the pockets of taxpayers (which include business firms and their customers)–will neither reduce their net claim on the overall economy nor strengthen incentives to produce better health outcomes at lower costs. The current bills unfortunately would set us back in that regard. Their most likely results would be further spikes upward in government spending, unfunded entitlement obligations, federal budget deficits, tax burdens, and regulatory drag on the economy; and tighter squeezes on investment, innovation, and human capital development. The legislation’s complex, layered schemes of mandated costs, cross-subsidies, and taxes will discourage increased labor force participation, work effort, and job growth. To improve U.S. competitiveness in international markets, we need not only do less harm in “reforming” health care. We should focus on more important and effective policy levers involving taxes (particularly corporate rates), major entitlement programs, and our educational system, while curbing the public sector’s overstimulated political appetites.

### A2: Econ Decline

#### No correlation between economic decline and war.

Walt 20, Robert and Renée Belfer professor of international relations at Harvard University. (Stephen M., 5/13/20, “Will a Global Depression Trigger Another World War?”, *Foreign Policy*, https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/)

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”   
Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success.

Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then.

The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term.

#### COVID thumps econ BUT it’s resilient

R. David Ranson 20, Research Fellow at the Independent Institute and the President and Director of Research at HCWE Inc., “Resilient US Economy Has Overcome the COVID-19 Recession”, Independent Institute, 10/9/20, <https://www.independent.org/news/article.asp?id=13290>

Though the president and first lady weren’t able to dodge the COVID-19 bullet, the U.S. economy, we now know, has adapted remarkably well to the pandemic and social distancing. As a result, the worst of the COVID-19 recession is over.

Fear pushed public and even professional opinion to be bearish about the prospects of economic recovery. On both sides of the aisle, it became commonplace to assume that economic vitality depended largely on financial aid from Washington.

Therein lies a Catch-22 that’s keeping us from paying attention to the economy’s rebound. If markets and the economy recover or perform well, the conventional wisdom attributes this to government “stimulus.” If they stagnate or perform poorly, it’s attributed to Washington’s sloth and stinginess. In short, we’ve been too focused on vulnerability—and the perceived need for artificial stimulation—and not focused enough on resilience.

Real GDP dropped like a stone in the second quarter (April-June) of 2020, at a record annual rate of 31.7%. The great majority of forecasters did not anticipate that we could recover from such a blow anytime soon—even taking into account unprecedented government largesse. Their predictions of sustained weakness are being overtaken by events.

Weeks ago the largest component of gross domestic product, consumer spending, already had bounced back to pre-pandemic levels, recovering twice as fast as employment or industrial production. Within just two months, May and June, retail sales had completed a full round trip. In July and August they rose further.

How well does this good news reflect the economy as a whole? That requires an estimate of GDP itself. With forecasters in broad disagreement, it might seem that we’ll have to wait until third quarter results are in.

Happily, thanks to the Center for Quantitative Economic Research at the Federal Reserve Bank of Atlanta, there’s now a more timely source of information, unavailable in past downturns, and derived from real-time hard data: the bank’s GDPNow estimate. As of Sept. 24 the GDPNow team calculated third-quarter annualized growth of 32%.

This figure exceeds all but three of the 62 forecasts in The Wall Street Journal’s September survey of forecasters, and reflects a huge upward revision from GDPNow’s earliest estimate at the end of July.

Such quarter-to-quarter growth would be twice the record set by the Korean War buildup. And it implies that the economy already had recaptured three-fourths of its second-quarter collapse in a single quarter.

The speed and vigor of the U.S. rebound can be interpreted in two contrasting ways. One is that federal intervention has been much more effective than expected. There will be no shortage of politicians waiting to take credit for that. The other is that, collectively, virtually all of the so-called experts underestimated the economy’s intrinsic resilience.

Back in the days when federal “stimulus” was puny by today’s standards, GDP already showed an ability to bounce back from drastic financial shocks, natural disasters, widespread strikes and global crises. To paraphrase Independent Institute senior fellow Richard Vedder, professor emeritus of economics at Ohio University, perhaps the most impressive example is the economic transition following demobilization at the end of World War II. Millions of military personnel became jobless within months and military spending plummeted. But the economy’s resilience came to the rescue and the predicted sharp rise in overall unemployment never occurred.

It’s not clear whether government “stimulus” funds add to or subtract from the economy’s resilience. Relief to those among the newly unemployed who are too pressed to fend for themselves may actually help them become more resilient. On the flip side, moderate deprivation may be a greater spur to self-reliance, encouraging the unemployed to seek work rather than temporary income from government.

Either way, the resilience of the U.S. economy is overpowering the COVID-19 recession, which soon could be history.

## Innovation Adv

### Innovation Up

#### US innovation is skyrocketing

Lisa M. Jarvis 20, BA in Physical Chemistry from Bard College. She also attended Northwestern University, "The New Drugs Of 2019," 2020, Chemical & Engineering News, https://cen.acs.org/pharmaceuticals/drug-%20development/new-drugs-2019/98/i3

Although pharmaceutical companies last year were unable to top the record-shattering **59 new drugs** **approved** in the US in 2018, they were still on a roll. In **2019**, the Food and Drug Administration green-lighted **48 medicines**, a crop that includes **myriad modalities** and many new **treatments** for long-neglected diseases.

Taken together, the **past 3 years** of approvals represent **drug companies’** **most productive period** in more than 2 decades. Still, some analysts caution that the steady flow of new medicines could mask troubling indications about the health of the industry.

The year brought several notable trends. The first was an uptick in the number of novel mechanisms on display in the new drugs. Roughly **42%** of the medicines were first in class, meaning they had new mechanisms of action; this is a **jump** over the **prior 4 years**, when that portion ranged between 32 and 36%. Another trend was the influx of newer modalities. While small molecules continue to account for the lion’s share of new molecular entities (NMEs), making up 67% of overall approvals in 2019, the list also includes several antibody-drug conjugates, an antisense oligonucleotide therapy, and a therapy based on RNA interference (RNAi).

Yet another encouraging trend was the **influx** of **innovative therapies** for underserved diseases. Standout approvals include two new drugs for **sickle cell anemia** (Global Blood Therapeutics’ Oxbryta and Novartis’s Adakveo), an antibiotic for **treatment-resistant t**u**b**erculosis (Global Alliance for TB Drug Development’s pretomanid), and a therapy for women experiencing postpartum depression (Sage Therapeutics’ Zulresso). “

**The quality of** the **drugs** over the **last decade** or so **has steadily improved since the depths of the** innovation crisis **10–12 years ago**,” says Bernard Munos, a senior fellow at FasterCures, a drug research think tank. “We’re seeing stuff that frankly would have looked like **science fiction** back then.”

### Turn

#### The plan crushes industry predictability---innovators are risk-averse---antitrust law triggers paranoia, hemming R&D.

Shepherd ’20 [Joanna; December 20; Professor of Law at Emory; CPIP, “The Legal and Industry Framework of Pharmaceutical Product Hopping and Considerations for Future Legislation,” <https://cip2.gmu.edu/wp-content/uploads/sites/31/2020/12/Shepherd-Product-Hopping.pdf>]

V. Consequences of Overly Broad or Vague Legislation

Legislation defining anticompetitive product hopping should aim to facilitate generic entry and lower drug prices. However, if the enacted legislation is too broad or overly vague, it could instead harm consumers by reducing innovation and increasing health care spending.

First, overly broad legislation would deter important future innovations. Most innovation in the pharmaceutical industry involves development of next-generation improvements, such as creating new products that expand therapeutic classes, increase available dosing options, remedy physiological interactions of known medicines, or improve other properties of existing medicines.35 According to FDA data, two-thirds of new drug approvals are for these incremental innovations.36 The World Health Organization has found that over 60 percent of the drugs needed to combat prevalent diseases have resulted from incremental innovation.37 Overly broad legislation would deter these important incremental innovations that are critical to improving health outcomes.

Second, legislation that fails to provide clear guidance will create uncertainty for brand innovators. This uncertainty can deter innovation in the pharmaceutical industry. Brand drug companies are the ones largely responsible for pharmaceutical innovations; in the last decade, they have spent over half a trillion dollars on R&D, and they currently account for over 90 percent of the spending on the clinical trials relied on by brands and generics alike.38 But if brand companies cannot reliably predict when their conduct will be considered anticompetitive, they will have less incentive to engage in costly R&D in the first place. The companies will not spend the billions of dollars it typically costs to bring a new drug to market when they cannot be certain that, years down the road, introducing that new drug will not expose them to damaging litigation, market-stopping injunctions, or penalties. If product hopping legislation increases the uncertainty around the introduction of new products, innovation will suffer.

#### Antitrust law is a battering ram for innovation and chills patent stability.

Mosoff et al. ’19 [Adam, Kristen Osenga, Randall Rader, Mark Schultz, and Saurabh Vishnubhakat; January 28; Professor of Law at George Mason University; Regulatory Transparency Project, “How Antitrust Overreach is Threatening Healthcare Innovation,” <https://regproject.org/paper/how-antitrust-overreach-is-threatening-healthcare-innovation/>]

II. The FTC’s Heavy-Handed Meddling Upsets the Delicate Balance Between Branded and Generic Drug Companies, Hindering Innovation and Harming Consumers

Since the late 1990s, the FTC has devoted substantial resources to combating what it views as anticompetitive behavior on the part of drug companies in the healthcare market. The FTC has interposed its scrutiny even where the FDA has approved drugs and when the branded and generic companies have decided a legal fight is no longer worth having. The FTC’s meddling restricts behavior that is lawful under the Federal Food, Drug, and Cosmetic Act (FDCA). The FTC’s meddling also usurps the regime Congress carefully crafted for resolving patent disputes between branded and generic drug companies.

The FTC has devised a series of novel theories to justify treating lawful behavior as anticompetitive and worthy of enforcement action and legislative changes. These theories have been adopted—and adapted—by state antitrust enforcers as well as private antitrust plaintiffs. The FTC has conducted industry-wide investigations and prepared massive reports on supposed anticompetitive conduct to recommend legislative changes despite neither the branded nor generic drug industry seeking such changes. These changes to the law would restrict or punish patent owners and even patent challengers. The FTC has, on its own initiative, made the already volatile world of drug development more uncertain and more hostile, ultimately resulting in less innovation and fewer choices for consumers in the short term (e.g., generic options) and long term (e.g., new drugs).

The FTC’s aggression extends to the courtroom. For nearly two decades, the FTC and other antitrust plaintiffs have attacked patent settlements reached by branded and generic drug companies. As explained above, the regulatory scheme for new drugs gives rise to an unusual type of patent litigation in which the generic drug company—the defendant—is not at risk of money damages for infringement because litigation generally occurs before the generic drug has obtained FDA approval and enters the market. Because of this unusual arrangement, where each side had to yield something of value to the other at the settlement table, a patent owner occasionally pays a settlement to the defendant (rather than forgiveness of damages, which is typically not an option) in exchange for the defendant agreeing to slightly delay the launch of its generic drug. Other considerations, such as the generic company agreeing to source materials from the branded company or other business or research partnerships, are not uncommon.

Beginning in the 1990s, the FTC took the position that such settlements were a categorically illegal restraint of trade. Courts did not agree, as modern antitrust jurisprudence recognizes that declaring something categorically illegal in the absence of more facts and details is dubious. Courts generally concluded that a settlement within the scope of the patent—where the defendant agreed to remain off the market no more than already required by the patent but perhaps longer than a successful court challenge—did not itself violate the antitrust laws. Yet the FTC persisted in arguing its position to the Supreme Court. In the 2013 Actavis case, the Supreme Court declined the FTC’s invitation to find reverse payment settlements categorically anticompetitive, ruling instead that these settlements must be evaluated under antitrust law’s “rule of reason,”, which is a detailed look at all the relevant facts and circumstances of the individual case.7 Still undeterred in the wake of Actavis, the FTC continues to argue that a variety of patent settlements are anticompetitive and accuse district courts of misinterpreting Actavis.

The FTC’s basic position is that antitrust scrutiny is triggered when the patent owner offers anything of value beyond the litigation expenses that settlement would save. Any patent owner who tries to entice a generic competitor to settle by offering anything more than litigation costs is treated suspiciously by the FTC. Even if the settlement is a complex corporate transaction that involves manufacturing and promotion deals or other products—where both parties might benefit beyond merely the ending of a lawsuit—the FTC’s basic position is to presume an antitrust violation.

Not surprisingly, the FTC’s overzealous actions against drug makers make it very difficult to settle pharmaceutical patent litigation without branded and generic drug companies both expecting an antitrust case, which may itself end up effectively revisiting the patent issues the parties sought to move beyond by settling. Companies still try to craft agreements that eliminate the risk that both face in litigation while ensuring that generic market entry occurs well before patent expiry, but no matter the terms, the FTC stands ready to argue that the companies should not have settled. In the end, these parties seem to want patent litigation cases to continue to final judgment, even when this is not in the interest of the branded companies, generic drug companies, consumers or the federal court system.

The FTC has also started to interfere with the ordinary cycle of incremental innovation in the drug industry. Incremental drug innovation is both commonplace and can be medically important. New dosage forms and routes of administration can make life-sustaining drugs easier to administer to new populations. New formulations, such as extended release formulations, can simplify dosing, thus increasing patient compliance.

In recent years, however, the FTC has targeted these patents. The chief complaint advanced by the FTC is that incremental innovations are trivial advances and do not deserve patent protection. Where the branded company replaces an older version of its product with the patented new version, the FTC accuses the branded company of “product hopping” to force the market to move to new drugs. The problem with this argument is threefold. First, these innovations have satisfied the requirements of the Patent Act. Second, if they are indeed trivial, the patents will likely be held invalid in federal court when challenged by generic competitors.  Third, if the branded company’s new product does not provide better outcomes, insurers are unlikely to cover the product and will instead require a patient to use the generic version of the branded company’s first product. The FTC’s actions are thus a solution in search of a problem.

Conclusion

The FTC’s goals may be well-intentioned, but its intrusion into domains that other, more expert agencies already oversee and comprehensively regulate is troubling. By substituting its own agenda for the business judgment of sophisticated parties in the marketplace, the FTC has overreached its proper role and begun to disrupt the cycle of investment, product development, recoupment, further incremental advancement, and risk management that drives the creation of new drugs that save lives and promote greater public health.

### A2: AMR

#### ABR won’t get close to extinction, intervening actors solve it, their internal link can’t

Ed Cara 17, Science Writer for The Atlantic, Newsweek, and Vocativ, 1/27/17, “The Attack Of The Superbugs,” http://www.vocativ.com/394419/attack-of-the-superbugs/

Antibiotic-resistant infections kill at least 700,000 people worldwide a year right now, according to an exhaustive report commissioned by the UK in 2014, and without any substantial medical breakthroughs or policy changes that slow down resistance, they may claim some 10 million deaths annually by 2050 — eclipsing cancer in general as a leading cause. These deaths largely won’t come from pan-resistant infections, just tougher ones. A preventable death there, a preventable death here.

Leaving that aside, antibiotics, along with proper sanitation and nutrition, gird our entire way of living. Most every invasive surgery, pregnancy, organ transplant and chemotherapy session we go through will become riskier. Other diseases like HIV, malaria or influenza will become deadlier, since bacteria often exploit the opening in our immune system they leave behind. And already precarious populations like those living with cystic fibrosis, prisoners, and the poor will lose years off their lives.

For all the warranted gloom, though, Farewell does think there are reasons to be hopeful. “I don’t think we are doing enough, but the scientific community along with many governmental and private foundations are very actively involved in finding not only new antibiotics, but new solutions to this problem,” she said. There’s been a noticeable change in attitude and increased urgency surrounding antibiotic resistance, she said, one that she hadn’t seen even five years ago, let alone twenty.

Until recently, that attitude change could be seen from places as high up as the U.S. federal government. In 2014, former President Obama issued an executive order aimed at addressing antibiotic resistance, the first real acknowledgement of the problem from an administration, devoting funding and outlining a national action for combatting resistance. Through its federal agencies, the administration pushed to reduce antibiotic use on farms and encouraged doctors to stop using them in excess.

“There has been a lot of work done the last couple of years, much of it spurned by [Obama’s] National Action Plan,” said Dr. David Hyun, a senior officer for Pew Charitable Trusts’ Antibiotic Resistance Project. The CDC, in particular, has used its funding to open up regional labs that allow them to better detect and respond to antibiotic-resistant outbreaks like the Nevada case, he said. They ultimately hope to create an expansive surveillance system that can easily keep track of resistance rates on a national, state and regional level. A parallel system also exists for monitoring resistance in the food chain, shepherded by the CDC and the U.S. Department of Agriculture.

In fact, it was this sort of cooperation between national and local health agencies that enabled Nevada doctors to stop the worst from happening, said Dr. Lei Chen. The swift identification of a possible CRE strain by the hospital, coupled with the woman’s medical history, led to a precautionary quarantine, while also prompting Chen’s public health department and eventually the CDC into action. And it may help prevent future cases from spilling into the public. According to Chen, the CDC has allocated funding this year to all of Nevada’s state public health departments so they can better detect CRE and other dangerous resistant strains.

Under the Trump administration, there’s no telling how these small victories will hold up or whether they will advance. All references to antibiotics once found on the Whitehouse.gov site have been removed, including a link to the Obama administration’s national action plan, and the fact that they’re already tried to bar USDA scientists from discussing their work with the public while stripping funding from other public health agencies isn’t encouraging.

Even with the best public policy, however, there’s no clear light at the end of the tunnel. Antibiotic resistance has gradually been worsening, even within the last 15 to 20 years, when superbugs like methicillin-resistant Staphylococcus aureus (MRSA) first became widely known, said Hyun. The effort needed to develop new drugs has been in short supply, hamstrung by pharmaceutical companies’ inability to recoup the costs of bringing new antibiotics to market. That’s because, unlike the latest heart medication, any new antibiotics will have to be treated like the last drops of water during a drought, used as little as possible — the exact opposite way to make money off a new product. Yet, much like climate change, the financial toll of not doing anything will total in the trillions years down the road. And it already numbers in the billions now, according to the CDC.

Of course, we need bacteria to survive. And most need or pay no mind to us in return. Even pan-resistant bacteria don’t really mean harm. Some have been found in perfectly healthy people, a fact that’ll either comfort you or keep you awake at night, only causing problems when our immune system wavers. There’s no army of sentient E. coli that will rise up and someday overthrow the human race.

But barring the calvary showing up, a new fear of ours will learn to settle in, almost unnoticed. It’ll creep in when we pick our heads up from a nasty fall that scrapes our skin open or breaks our bones; when we wave goodbye to our loved ones before they enter an operating room, or when we cradle our newborns into a world teeming with the living infinitesimal, wishing there was still a way to shield them from it as our parents once could for us. A fear of naked vulnerability.

The antibiotic apocalypse will be gentle, if it fully arrives, but it won’t be any less devastating to the human spirit.

### A2: Pandemics

#### Disease can’t cause extinction

Dr. Toby Ord 20, Senior Research Fellow in Philosophy at Oxford University, DPhil in Philosophy from the University of Oxford, The Precipice: Existential Risk and the Future of Humanity, Hachette Books, Kindle Edition, p. 124-126

Are we safe now from events like this? Or are we more vulnerable? Could a pandemic threaten humanity’s future?10

The Black Death was not the only biological disaster to scar human history. It was not even the only great bubonic plague. In 541 CE the Plague of Justinian struck the Byzantine Empire. Over three years it took the lives of roughly 3 percent of the world’s people.11

When Europeans reached the Americas in 1492, the two populations exposed each other to completely novel diseases. Over thousands of years each population had built up resistance to their own set of diseases, but were extremely susceptible to the others. The American peoples got by far the worse end of exchange, through diseases such as measles, influenza and especially smallpox.

During the next hundred years a combination of invasion and disease took an immense toll—one whose scale may never be known, due to great uncertainty about the size of the pre-existing population. We can’t rule out the loss of more than 90 percent of the population of the Americas during that century, though the number could also be much lower.12 And it is very difficult to tease out how much of this should be attributed to war and occupation, rather than disease. As a rough upper bound, the Columbian exchange may have killed as many as 10 percent of the world’s people.13

Centuries later, the world had become so interconnected that a truly global pandemic was possible. Near the end of the First World War, a devastating strain of influenza (known as the 1918 flu or Spanish Flu) spread to six continents, and even remote Pacific islands. At least a third of the world’s population were infected and 3 to 6 percent were killed.14 This death toll outstripped that of the First World War, and possibly both World Wars combined.

Yet even events like these fall short of being a threat to humanity’s longterm potential.15

[FOONOTE]

In addition to this historical evidence, there are some deeper biological observations and theories suggesting that pathogens are unlikely to lead to the extinction of their hosts. These include the empirical anti-correlation between infectiousness and lethality, the extreme rarity of diseases that kill more than 75% of those infected, the observed tendency of pandemics to become less virulent as they progress and the theory of optimal virulence. However, there is no watertight case against pathogens leading to the extinction of their hosts.

[END FOOTNOTE]

In the great bubonic plagues we saw civilization in the affected areas falter, but recover. The regional 25 to 50 percent death rate was not enough to precipitate a continent-wide collapse of civilization. It changed the relative fortunes of empires, and may have altered the course of history substantially, but if anything, it gives us reason to believe that human civilization is likely to make it through future events with similar death rates, even if they were global in scale.

The 1918 flu pandemic was remarkable in having very little apparent effect on the world’s development despite its global reach. It looks like it was lost in the wake of the First World War, which despite a smaller death toll, seems to have had a much larger effect on the course of history.16

It is less clear what lesson to draw from the Columbian exchange due to our lack of good records and its mix of causes. Pandemics were clearly a part of what led to a regional collapse of civilization, but we don’t know whether this would have occurred had it not been for the accompanying violence and imperial rule. The strongest case against existential risk from natural pandemics is the fossil record argument from Chapter 3. Extinction risk from natural causes above 0.1 percent per century is incompatible with the evidence of how long humanity and similar species have lasted. But this argument only works where the risk to humanity now is similar or lower than the longterm levels. For most risks this is clearly true, but not for pandemics. We have done many things to exacerbate the risk: some that could make pandemics more likely to occur, and some that could increase their damage. Thus even “natural” pandemics should be seen as a partly anthropogenic risk.

### Turn

#### Antitrust litigation is uniquely complex and resource-intensive---a spike trades-off with judicial functioning in other areas

Daniel R. Warren 15, JD from the Boston University School of Law, BS from Ohio State University, “Stress Fractures: The Need to Stop and Repair the Growing Divide in Circuit Court Application of Summary Judgment in Antitrust Litigation”, Review of Banking and Financial Law, 35 Rev. Banking & Fin. L. 380, Lexis

A. Summary Judgment Can Cut Short Extreme Costs

Antitrust litigation can involve enormous discovery costs, particularly when antitrust litigation overlaps with class action litigation. Due to the wide scope of many antitrust claims, discovery can implicate a broad range of documents, records, interrogatories, and depositions. In fact, "[s]trategically minded" plaintiffs can take advantage of antitrust law's "onerous discovery costs" by requiring the defendant "to respond to wide-ranging interrogatories, produce documents, and prepare for and defend depositions" with only a "facially plausible allegation" of an antitrust violation. These costs can take a very large toll on both large and small businesses. The legal hours necessary to answer and address discovery challenges can also impose extreme costs.

Plaintiffs can often use discovery costs as a weapon against defendants in antitrust litigation. The Seventh Circuit Court of Appeals stated that "antitrust trials often encompass a great deal of expensive and time consuming discovery and trial work" in explaining that the "very nature" of antitrust litigation should encourage summary judgment. The court's language here supports [\*389] the idea that in antitrust litigation, summary judgment has a special value, greater even than its normal use in other areas of the law. Summary judgment can be used to cut short lengthy litigation where parties have already accrued extreme costs from discovery and one party still cannot produce a genuine issue of material fact.

In antitrust litigation, the value of summary judgment to mitigate discovery costs through shortening litigation is elevated to a special importance even greater than normal for three reasons. First, antitrust litigation normally involves large organizations, which magnifies the costs of those firms going through the discovery process. Large firms have a great number of involved employees and departments, all of which would likely be subject to the broad discovery that is characteristic of antitrust litigation. Summary judgment, though normally considered after discovery, is a procedural weapon available at nearly any point in this process, as "a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." The existence of a stay for extension of discovery shows that summary judgment need not automatically wait for discovery's completion, and thus can be an invaluable safeguard against otherwise incredibly costly discovery. This safeguard allows summary judgment to be a powerful tool to radically lower discovery time and costs without "railroad[ing]" the other party.

Second, antitrust litigation is normally a slow process that takes a great deal of time. The amount of time necessary to process and review evidence produced by discovery leads to incredible legal costs, often disproportionately placed on the defendant firm. The plaintiff has the advantage over the defendant in deciding the scope of discovery costs, and may often tailor its claim in such a way as to avoid the discovery costs that a defendant's counterclaim may reflect [\*390] back on the plaintiff. These lengthy trials can be effectively truncated by summary judgment, and thus summary judgment's normal value is even greater in the world of antitrust litigation where protracted trials are the norm.

Finally, the vast amount of evidence necessary to prove the elements of an antitrust claim contribute to the large discovery costs tied to antitrust litigation by overwhelming judges' ability to reign in discovery costs. Currently, we rely on judges to limit the range of discovery requested, but in the context of antitrust litigation, judges have difficulty dealing with the broad variety of evidence that may be called for. One analysis of the power of discovery described it as a costly and potentially abusive force, and determined judges' abilities to limit discovery costs on their own as "hollow" at best:

A magistrate supervising discovery does not--cannot--know the expected productivity of a given request, because the nature of the requester's claim and the contents of the files (or head) of the adverse party are unknown. Judicial officers cannot measure the costs and benefits to the requester and so cannot isolate impositional requests. Requesters have no reason to disclose their own estimates because they gain from imposing costs on rivals (and may lose from an improvement in accuracy). The portions of the Rules of Civil Procedure calling on judges to trim back excessive demands, therefore, have been, and are doomed to be, hollow. We cannot prevent what we cannot detect; we cannot detect what we cannot define; we cannot define "abusive" discovery except in theory, because in practice we lack essential information. Even in retrospect it is hard to label requests as abusive. How can a judge distinguish a dry hole (common in litigation as well as in the oil business) from a request that was not justified at the time?

[\*391] Summary judgment can also reduce costs to both parties by reducing time and discovery costs to the parties, and to the judicial system itself, by cutting short lengthy litigation. Both sides often incur costs from employing experts in various areas, researching and producing evidence necessary to prove or disprove elements of antitrust actions, and in the great many legal hours necessary for both plaintiffs and defendants--not to mention costs to the state--during lengthy litigation that is often fruitless due to an "incentive to file potentially equivocal claims." Antitrust law is structured in such a way as to have a "special temptation" for what would otherwise be frivolous litigation. As antitrust law is, by its very nature, between competitors, there is significant motivation to force costs on to other firms, perhaps even through frivolous legal claims or intentionally imposing other large legal costs. Costs can also multiply in antitrust litigation because antitrust actions are often combined with other particularly complex areas of law, such as patent law or class actions. Class actions particularly in the antitrust context can make trials "unmanageable." Combining two already complex areas of law is a recipe for large legal costs and prolonged litigation. The value of cutting costs short cannot be overstated, as antitrust litigation takes place in the arena of business competition. This means that firms are already engaged in close competition for antitrust cases to be relevant, and thus unnecessary costs can further distort the market.

#### Efficient court review underpins patent-led innovation---that stops nuclear war and a range of existential threats

Robert J. Rando 16, Founder and Lead Counsel of The Rando Law Firm P.C., Fellow of the Academy of Court-Appointed Masters, Treasurer for the New York Intellectual Property Law Association, Chair of the Federal Bar Association Intellectual Property Law Section, “America’s Need For Strong, Stable and Sound Intellectual Property Protection and Policies: Why It Really Matters”, IP Insight, June 2016, p. 12-14 [language modified] [abbreviations in brackets]

Robert F. Kennedy’s speech, which includes his reference to the oft-quoted “interesting times” curse, applies throughout history in many contexts and, indeed, with both negative and positive connotation. While he focused on the struggles for freedom and social justice, the requisite ascendancy of the individual over the state, and the institution and integration of those ideals for the greater good, he also promoted the goals of greater global unity, cooperation and communication, which were, and could be, achieved by advances in technology. And, as noted in the excerpt, he championed “the creative energy of men.”

Intellectual Property in “Interesting Times”

It is beyond question that starting with the last decade of the twentieth century and throughout the first two decades of the twenty-first century, when it comes to matters relating to intellectual property, we have been living in “interesting times.” Some may interpret these interesting times as defined by the curse and others may view it by the ordinary meaning of “interesting.” In either case, those of us that toil in the fields of patents, copyrights, trademarks, trade secrets, and privacy rights have experienced an unprecedented sea change in the way those rights are procured, protected and enforced. Likewise, and perhaps more importantly, even those of us that do not practice in these areas of law, as well as the general public, have been, and continue to be, impacted by the consequences of these changes (both positive and negative).

The Changes In Intellectual Property Law

Examples of some of the changes in intellectual property law are: the sweeping 2011 legislative changes to the patent laws under the America Invents Act (AIA), which impact is only beginning to be fully appreciated; the various proposals for patent law reform, on the heels of the AIA, beginning with the 113th and 114th Congress; the copyright laws Digital Millennium Copyright Act (DMCA) and numerous 114th Congressional proposed copyright law changes; the recently enacted federal trade secret law (Defend Trade Secrets Act of 2016 (DTSA))2; the impact of the internet, domain names and globalization on Trademark law; the intellectual property law harmonization requirements included in various global/regional trade agreements; and the proliferation of devices (both invasive and non-invasive) that defy any rational basis for believing we can still adhere to the republic’s libertarian understanding of the right to privacy.

Without engaging in “chicken and egg” analysis, it is sufficient to observe that technological advancement, societal needs, globalization, existential threats, economic realities, and political imperatives (or what James Madison referred to in the Federalist Papers No. 10 as factious governance), have combined to create the “interesting times” for the United States [IP] intellectual property laws.

What was said by Bobby Kennedy in 1966 remains true today. We live in dangerous and uncertain times. Many of the existential threats remain the same (nuclear war and proliferation, [genocides] ~~genocidal maniacs~~ and natural disease) and some are new ([hu]manmade disease, greater awareness of environmental changes and possibly human interrelationship factors, and the unintended consequences of genetic manipulation and robotic technologies). The danger and uncertainty that pervades changes in intellectual property laws, though not an existential threat of the same manner and kind, correlates with the threat and remains “more open to the creative energy of man than any other time in history.”

Apropos the creative energy of man, there is a non-coincidental congruence and convergence of activity across and among the three branches of government, occurring almost simultaneously with the congruence and convergence of the rapid developments of technological innovation across various scientific disciplines and the information age, reflected in the transformation of the [IP] intellectual property laws in the United States.

Patents

The passage of the AIA was a culmination of efforts spanning several years of Congressional efforts; and the product of a push by the companies at the forefront of the twenty-first century new technology business titans. The legislation brought about monumental changes in the patent law in the way that patents are procured (first inventor to file instead of first to invent) and how they are enforced (quasi-judicial challenges to patent validity through inter-party reviews at the Patent Trial and Appeals Board (PTAB)).

The 113th and 114th Congress grappled with newly proposed patent law reforms that, if enacted, may present additional tectonic shifts in the patent law. Major provisions of the proposals include: fee-shifting measures (requiring loser pays legal fees - counter to the American rule); strict detailed pleadings requirements, promulgated without the traditional Rules Enabling Act procedure, that exceed those of the Twombly/Iqbal standard applied to all other civil matters in federal courts, and the different standards applicable to patent claim interpretation in PTAB proceedings and district court litigation concerning patent validity.

The Executive and administrative branch has also been active in the patent law arena. President Obama was a strong supporter of the AIA3 and in his 2014 State Of The Union Address, essentially stated that, with respect to the proposed patent law reforms aimed at patent troll issues, we must innovate rather than litigate.4 Additionally, the USPTO has embarked upon an energetic overhaul of its operations in terms of patent quality and PTO performance in granting patents, and the PTAB has expanded to almost 250 Administrative Law Judges in concert with the AIA post-grant proceedings’ strict timetable requirements.

The Supreme Court, not to be outdone by the Articles I and II branches of the U.S. government, has raised the profile of patent cases to historical heights. From 1996 to the 2014-15 term there has been a steady increase in the number of patent cases decided by the SCOTUS5. The 2014-15 term occupied almost ten percent of the Court’s docket. Prior to the last two decades, the Supreme Court would rarely include more than one or two patent cases in a docket that was much larger than those we have become accustomed to from the Roberts’ Court6.

While the SCOTUS activity in patent cases is viewed by some as a counter-balance to the perceived Federal Circuit’s pro-patent and bright line decisions, it can just as assuredly be viewed as decisions rendered by a Court of final resort which does not function in a vacuum devoid of the social, economic and political winds of the times. In recognition of the effect new technologies have on the patent law, the politicization of intellectual property law matters, especially patent law (through factious governing principles of the political branches of the government), and the maturation of the Federal Circuit patent law jurisprudence, the SCOTUS has rendered opinions in cases that impact, and perhaps are/were intended to mitigate the concerns regarding, some of the vexing issues confronting the patent community today (e.g., non-practicing entities or in the politicized parlance “patent trolls,” the intersection of patent and antitrust laws in Hatch-Waxman so called “pay-for-delay” settlements between Branded and Generic pharma companies, and the fundamental tenets that comprise the very heart of what is patent eligible subject matter).

Copyrights

The advent and ubiquity of the internet, social media and digital technologies (MP3s, Napster, Facebook, YouTube, and Twitter) represents the impetus for changes in the Copyright laws. The DMCA addressed the issues presented by these advances or changes in the differing media and forms of artistic impressions. The proliferation of digital photos, graphic designs and publishing alternatives, as well as adherence to globalization harmonization have given rise to changes in the statutory law and jurisprudence in this area of intellectual property law. Additionally, there is an overlap of patent rights and copyrights for software driven by the ebb and flow of the strength of each respective intellectual property protection.

Notably, the Patent and Copyright Clause7, in addition to Author’s writings, has been viewed as discretely applying to two different types of creativity or innovation. When drafted the “sciences” referred not only to fields of modern scienctific inquiry but rather to all knowledge. And the “useful arts” does not refer to artistic endeavors, but rather to the work of artisans or people skilled in a manufacturing craft. Rather than result in ambiguity or confusion, perhaps the Framers were either quite prescient or, just coincidentally, these aspects of the Patent and Copyright Clause have converged.

For example, none other than the famous Crooner, Bing Crosby, benefited from both protections. Well-known as a prolific and popular recording artist he also benefited from his investments in the, then innovative, recording technologies. Similarly, the Beatles, Beach Boys, as well as many other rock and roll artists, experimental efforts in music performance, recording and production, helped to transform the music industry in both copyrightable artistic expression and patentable inventions. Similarly, film, literary and digital arts reap benefits at the crossroads of both copyright and patent protections.

Trademarks

Trademark laws have been impacted by numerous changes in the business landscape. They include the internet, Domain names, international rights in a global economy, different venues and avenues for branding, marketing and merchandising, global knock-offs from nations that have a less than stellar respect for intellectual property rights, and international trade agreements. More recently, politicization (or perhaps political correctness) has creeped into the trademark law arena pitting branding rights and protections against first amendment rights.

Trade Secrets

As with Copyright and Trademark law, trade secrets law includes some of the same issues related to trade agreements. TRIPS required members to have trade secret protection in place. Initially, the United States compliance with this requirement has relied upon the trade secret law of the individual states. That compliance may be supplanted by the recently enacted DTSA. Similarly, the Trans Pacific Partnership (TPP) trade agreement contains intellectual property rights provisions that will trigger required changes to United States statutory Intellectual Property Laws.

The proposed trade secret legislation also gives rise to several concerns. For instance, there is an absence of a specific definition for trade secret, as well as potential issues of federalism, conflict with state law precedent (despite no preemption), remedies, and the impact on employer/employee relations.

There is also a real concern that the strengthening of trade secret protection in conjunction with the perceived weakening of patent protection (e.g., high rate of invalidating patents in post-grant proceedings before the PTAB and strict limitations on what is patent eligible subject matter) may very-well have the unintended consequence of contravening the purpose behind the Patent and Copyright Clause: “to promote the progress of the sciences and the useful arts.” Moreover, the incentive to innovate may very well be usurped by the advantage of withholding patent law disclosure of highly beneficial scientific advancements that directly affect the human condition, alter life expectancies and the evolution of the human species (rather than by mere “natural selection”), and what is the very essence of a human being (for better or worse). Thus, crippling innovation and the progress of the sciences and useful arts.

Privacy Rights

It is increasingly more difficult to function “off the grid.” The invasive and non-invasive attributes of the internet, the reliance upon the multitude of devices, social media, and information age technologies, and access to big data, all contribute to the decrease in and dilution of the right to privacy. Wittingly or otherwise, the strong libertarian roots of the republic have been replaced by dependence upon these modes of an information-age life. Commentary on the benefits and deficits of this reality are beyond the subject and purpose of this writing. Suffice to acknowledge that the right to privacy has been significantly reduced. The laws that protect these rights are in a constant struggle to maintain those rights while yielding to the demands of the lifestyle and security concerns. Laws that relate to cybersecurity in the global and domestic space create interplay with privacy rights. Legislation, trade agreements and jurisprudence all impact this area of intellectual property. Cross-border theft of trade secrets, competitor espionage, and loss of control over personal data are all implicated in the intellectual property law arena.

America’s Need For Strong Intellectual Property Protection

The need for strong protection of intellectual property rights is greater now than it was at the dawn of our republic. Our Forefathers and the Framers of the U.S. Constitution recognized the need to secure those rights in Article 1, Section 8, Clause 8. James Madison provides insight for its significance in the Federalist Papers No. 43 (the only reference to the clause). It is contained in the first Article section dedicated to the enumerated powers of Congress. The clause recognizes the need for: uniformity of the protection of IP rights, securing those rights for the individual rather than the state; and, incentivizing innovation and creative aspirations.

Underlying this particular enumerated power of Congress is the same struggle that the Framers grappled with throughout the document for the new republic: how to promote a unified republic while protecting individual liberty. The fear of tyranny and protection of the “natural law” individual liberty is a driving theme for the Constitution and throughout the Federalist Papers. For example, in Federalist No. 10, James Madison articulated the important recognition of the “faction” impact on a democracy and a republic. In Federalist No. 51, Madison emphasized the importance of the separation of powers among the three branches of the republic. And in Federalist No. 78, Alexander Hamilton, provided his most significant essay, which described the judiciary as the weakest branch of government and sought the protection of its independence providing the underpinnings for judicial review as recognized thereafter in Marbury v. Madison.

All of these related themes are relevant to the Patent and Copyright Clause and at the center of the intellectual property protections then and now. The Federalist Papers No. 10 recognition that a faction may influence the law has been playing itself out in the halls of congress in the period of time leading up to the AIA and in connection with the current patent law reform debate. The large tech companies of the past, new tech, new patent-based financial business model entities, and pharma factions have been the drivers, proponents and opponents of certain of these efforts. To be sure, some change is inevitable, and both beneficial and necessary in an environment of rapidly changing technology where the law needs to evolve or conform to new realities. However, changes not premised upon the founding principles of the Constitution and the Patent and Copyright Clause (i.e., uniformity, secured rights for the individual, incentivizing innovation and protecting individual liberty) run afoul of the intended purpose of the constitutional guarantee.

Although the Sovereign does not benefit directly from the fruits of the innovator, enacting laws that empower the King, and enables the King to remain so, has the same effect as deprivation and diminishment of the individual’s rights and effectively confiscates them from him/her. Specifically, with respect to intellectual property rights, effecting change to the laws that do not adhere to these underlying principles, in favor of the faction that lobbies the most and the best in the quid pro quo of political gain to the governing body threatens to undermine the individual’s intellectual property rights and hinder the greatest economic driver and source of prosperity in the country.

It is also important to recognize that the social, political and economic impact of strong protections for intellectual property cannot be overstated. In the social context, the incentive for disclosure and innovation is critical. Solutions for sustainability and climate change (whether natural, man-made or mutually/marginally intertwined) rely upon this premise. Likewise, as we are on the precipice of the ultimate convergence in technologies from the hi-tech digital world and life sciences space, capturing the ability to cure many diseases and fatal illnesses and providing the true promise of extended longevity in good health and well-being, that is meaningful, productive, and purposeful; this incentive must be preserved.

In similar fashion, advancements in technologies related to the global economy and communications will enhance the possibilities for solutions to political and cultural conflicts that arise around the globe. Likewise, the United States economy has always benefited when it is at the forefront of innovation and achieves prosperity from its leadership role in technological advancements.

Conclusion

As was the case in 1966, how we move forward today, to solve the many problems facing our country and the broader global community in these “interesting times,” both within and without the laws affecting intellectual property rights, depends upon the “creative energy of man” which must prevail. An achievable goal, dependent on the strong, stable and sound protection of intellectual property rights.

## Block

### States CP

#### And follow on guarantees it solves

Nolette 11 (Paul Brian Nolette, PhD, Assistant Professor, Marquette University, Department of Political Science, ADVANCING NATIONAL POLICY IN THE COURTS: THE USE OF MULTISTATE LITIGATION BY STATE ATTORNEYS GENERAL, a dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, Boston College, The Graduate School of Arts and Sciences, Department of Political Science, <https://core.ac.uk/download/pdf/151481511.pdf>, y2k)

To some degree this is a constraint on SAG multistate litigation – it suggests that if an argument is too far outside the political mainstream, SAGs may not be interested in litigating. This may be one reason why litigation concerning fatty foods and lead paint, for example, never flowered into multistate campaigns. From the perspective of the broader effort for social reform, however, this constraint is likely fairly easy to overcome. Litigation, far from being an isolated strategy, is coupled with efforts to gain support in Congress and within executive agencies. Even if these congressional and executive efforts had previously failed to produce new policies – as occurred in various campaigns explored in this dissertation – they may generate interest in the issues within Congress and among other actors, including the SAGs. Once these efforts spur at least some support in Congress – though still far from majority support – it paves the way to successfully employ multistate litigation. At that point, the litigation itself may help generate further support within Congress – as the AWP litigation did in transforming congressional views of settled pricing practices into fraudulent behavior.

#### The CP causes federal adoption

O’Connor 2 (Kevin J. O'Connor, Member of the Wisconsin Bar, and formerly Assistant Attorney General, Wisconsin Department of Justice, and Chair of the Multistate Antitrust Task Force, National Association of Attorneys General, Federalist Lessons for International Antitrust Convergence, 70 Antitrust L.J. 413, y2k)

But a system of multiple potential enforcers applying the same law has produced numerous opportunities for federal and state courts to rule on antitrust questions, thereby creating a rich trove of antitrust decisional law, at least in comparison to other enforcement regimes. Even in those instances where a state or private enforcer unsuccessfully litigates an alleged violation, the end result can be the development of useful, or even significant, case law.63 It is precisely this process that allows time-honored theories to be tested against the facts of particular cases. This system has both a qualitative and a quantitative element. Qualitatively, the concurrent enforcement system allows private parties, through litigation, to test theories adopted by the federal government in previous cases64 or in guidelines. 65 Even bedrock doctrine, such as the per se illegality of horizontal price fixing established in government cases, 66 subsequently have been "clarified" in private litigation. 67 Perhaps the most prominent example of an attempt to test theories adopted by the federal agencies is the attempt by a number of states to obtain injunctive relief against Microsoft beyond that obtained by the DOJ and several other states through negotiation. Whatever one thinks of the merits of the litigating states' position, their persistence is likely to generate important decisional law on the appropriate antitrust remedies in an important industry.6a

#### But only after the CP alone builds political momentum

Robert Manduca 19, PhD candidate in Sociology and Social Policy and a doctoral fellow in the Multidisciplinary Program in Inequality and Social Policy at Harvard University, 9/10/19, “Antitrust Enforcement as Federal Policy to Reduce Regional Economic Disparities,”

The ANNALS of the American Academy of Political and Social Science, Vol. 685, No. 1, https://doi.org/10.1177%2F0002716219868141

A third strategic consideration concerns the level of government at which to pursue establishment of a new antitrust regime. Ideally, aggressive enforcement should be pursued concurrently wherever possible, be that through the FTC, the U.S. Department of Justice (DOJ), Congress, or the states. However, action may not always be possible at the federal level, and in recent years the FTC and DOJ have generally looked favorably on mergers (Tepper 2019). Thus, it may be advantageous to initially pursue enforcement at the state level. A number of state attorneys general (AGs) have already begun investigations into Google and Facebook (Romm 2019), and ten state AGs recently sued to block the proposed merger between T-Mobile and Sprint (Harding McGill 2019). Besides the possibility of short-term action, state AGs have a number of advantages as antitrust enforcers. The most important of these is that in most states they are elected politicians. This means that they are well equipped to treat antitrust as a political issue—they have more reason than career bureaucrats to consider the political optics of particular stances and are more likely to be adept at communicating with the media and the public. They also stand to see personal electoral benefits from popular enforcement actions and are directly susceptible to pressure from organized advocates. State AGs thus occupy a unique position. Unlike federal enforcers at the DOJ or FTC, they are elected politicians who know how to mobilize voters and can be directly pressured to adopt pro-competition stances. But unlike members of Congress, they have direct enforcement power. A state-level strategy also offers the possibility of building enforcement momentum piecemeal. It may prove easier for antitrust advocates to secure the support of a handful of AGs, perhaps from states that are especially harmed by a particular conglomerate or potential merger, than to convince the FTC or DOJ to reverse several decades of harmful policies. As a suit progresses, other states or federal agencies may join in.

#### *Only* the states can solve healthcare competition---local regulations make federal laws moot

Feyman 16 [[Yevgeniy Feyman](https://www.forbes.com/sites/theapothecary/people/yevgeniyfeyman/) is a senior research assistant at the Harvard T.H. Chan School of Public Health in the department of health policy and management. He is also an adjunct fellow at the Manhattan Institute, “Antitrust Isn't Enough. States Must Make Healthcare More Competitive.”, June 24, 2016, https://www.forbes.com/sites/theapothecary/2016/06/24/antitrust-isnt-enough-states-must-make-healthcare-more-competitive/?sh=2a02ae557a22] IanM

So what are policymakers left to do? The FTC’s primary tool – litigation – is powerful, but can be high risk. After a failed attempt to block a hospital merger in 1994, for instance, the FTC would not formally win a hospital merger challenge until 2011. The answer to an uncompetitive health care market, as Jonathan Hartley and I argue in National Affairs, might lie with the states.

The **reason** this makes sense is simple: **health care regulation** is mostly local. **States** **control** who gets to **practice medicine**, they set standards for insurance **networks**, and regulate when hospitals are or aren’t allowed to **set up shop**.

**Take,** for example, **New York’s** very **unique ban** on **for-profit** hospitals – one of the **only such laws** in the country. Or the **36 states** with so-called “c**ertificate** o**f** n**eed**” (CON) laws on the books, which **require government** **permission** to **build** or expand **health care facilities**. Or that in **most states**, **nurse practitioners** still **can’t practice** to the **top of their licenses**.

**These** and other local **regulations** make **health care** markets **less competitive**, **less transparent**, and **more expensive**. The role of antitrust is of course still important. Last year, the Supreme Court issued a powerful decision in a case brought by the FTC against the North Carolina Board of Dental Examiners, refusing to grant the agency antitrust immunity. A tool to combat the most egregious anti-competitive behavior is critical.

But because the **FTC’s resources** are **limited**, and **many state-level policies** might be immune from national antitrust law, it **falls** to local **policymakers** to be **proactive**. Rather than protecting entrenched interests like large hospital systems, insurers, or medical societies, **lawmakers** should **focus on** **fostering competition** **across health care** wherever possible. The US health care system has many problems – too

#### Lit and solvency advocates check

Rose 13 (Amanda M. Rose, Associate Professor, Vanderbilt University Law School, Article: State Enforcement of National Policy: A Contextual Approach (with Evidence from the Securities Realm). Minnesota Law Review, 97, 1343, y2k)

A mature debate exists over the wisdom of concurrent state enforcement in the antitrust context. See, e.g., Stephen Calkins, Perspectives on State and Federal Antitrust Enforcement, 53 Duke L.J. 673 (2004) (defending concurrent state enforcement); Carole R. Doris, Another View on State Antitrust Enforcement - A Reply to Judge Posner, 69 Antitrust L.J. 345 (2001) (same); Harry First, Delivering Remedies: The Role of the States in Antitrust Enforcement, 69 Geo. Wash. L. Rev. 1004 (2001) (same); Robert L. Hubbard & James Yoon, How the Antitrust Modernization Commission Should View State Antitrust Enforcement, 17 Loy. Consumer L. Rev. 497 (2005) (same); cf. Richard A. Posner, Federalism and the Enforcement of Antitrust Laws by State Attorneys General, in Competition Laws in Conflict: Antitrust Jurisdiction in the Global Economy 252-66 (Richard A. Epstein & Michael S. Greve eds., 2004) [hereinafter Competition Laws in Conflict] (criticizing concurrent state enforcement); Michael L. Denger & D. Jarrett Arp, Does Our Multifaceted Enforcement System Promote Sound Competition Policy?, 15 Antitrust 41 (2001) (same); Robert W. Hahn & Anne Layne-Farrar, Federalism in Antitrust, 26 Harv. J.L. & Pub. Pol'y 877 (2003); Posner, supra note 22 (same). For more information about this debate, see also Michael DeBow, State Antitrust Enforcement: Empirical Evidence and a Modest Reform Proposal, in Competition Laws in Conflict, at 267-88; Michael S. Greve, Cartel Federalism? Antitrust Enforcement by State Attorneys General, 72 U. Chi. L. Rev. 99 (2005).

#### States are a firewall that fill-in for federal inaction on antitrust

Sam Olens 19, Juris Doctor from the Emory University School of Law, and Thurbert Baker, Juris Doctor from the Emory University School of Law, “State Attorneys General Matter. Here’s Why.”, Atlanta Business Chronicle, 1/7/2019, https://www.bizjournals.com/atlanta/news/2019/01/07/viewpoint-state-attorneys-general-matter-here-s.html

At times in our history, the federal government has been seen as a change agent. This isn’t one of those times.

With an anti–Big Government White House invested in deregulating and dismantling the administrative state, Congress in a near-permanent state of partisan gridlock and a Supreme Court guided by an originalist view of the role of government, state legislatures and state government agencies have stepped in to fill the legislative and regulatory void.

State attorneys general, meanwhile, have assumed a more proactive and coordinated litigating posture to effectively challenge federal law enforcement policy and protect state regulation from federal preemption.

The increase in attorney general activism is also a response to the political polarization that has plagued our civic life for the past two decades but has intensified by orders of magnitude during the Obama and Trump administrations. During the Obama years, conservative state attorneys general banded together to oppose regulatory changes and actions taken by the Environmental Protection Agency (EPA), the Department of Health and Human Services (HHS), the Consumer Financial Protection Bureau (CFPB) and other federal agencies. They submitted public comments opposing proposed regulations, filed multistate lawsuits seeking to prevent their enforcement and submitted friend-of-the-court briefs in support of private actions by individuals, companies and industry coalitions or associations.

More recently, liberal state attorneys general have dialed up the activism to 11 in response to President Trump’s launch of the most aggressive agenda of any president in living memory. Many state AGs, seeing themselves as the nation’s “last line of defense,” have joined together to oppose a wide range of administration policies, from expanding offshore drilling to rolling back vehicle emission standards to placing immigration-related conditions on federal funding for law enforcement grants.

In states that have taken on the role of change agents—legalizing cannabis, tightening gun control laws, creating state-level CFPBs—state AGs have been playing offense and defense: enforcing state laws and regulations against companies and individuals and defending state sovereignty against federal government intrusions.

At this writing, Democratic AGs have filed approximately 60 lawsuits against the Trump administration, including actions challenging the expansion of association health plans, caps on state and local tax deductions, parent-child separations at the border, the methane rule rollback, expanded offshore drilling and the repeal of net neutrality rules.

While no one expects a divided 116th Congress to make much progress on any policy initiatives, Democrats emerged from the 2018 midterm elections at the state level with a majority of AG seats — 27 to Republicans’ 24 [including Washington, D.C.], a net increase of four— fortifying the party’s efforts to use states as a firewall against President Trump through more challenges to administration policies and more investigations and enforcement actions relating to state laws on consumer protection, antitrust, financial services, data privacy, unfair/deceptive business practices, false claims, the environment and other laws to protect the public interest.

State AGs, by routinely combining their resources on multistate and multi-defendant investigations and enforcement actions, both civil and criminal, have raised the stakes for companies and entire industries. Understanding the scope of an AG’s authority and its level of activity and the political dynamics framing their choices, is critical to assessing, and addressing, many businesses’ regulatory risks.

#### They have experience and expertise AND are comparatively better than federal enforcement

Robert L. Hubbard 5, Director of Litigation at the Antitrust Bureau of the New York Attorney General's Office, and James Yoon, Assistant Attorney General in the Antitrust Bureau of the New York Attorney General's Office, “How The Antitrust Modernization Commission Should View State Antitrust Enforcement”, Loyola Consumer Law Review, 17 Loy. Consumer L. Rev. 497, Lexis

C. States Both Lead and Initiate Antitrust Litigation

Contrary to being free riders, states are often the first and only plaintiff in antitrust matters. Acting alone, states have initiated matters or extended matters into new areas or for new claimants. The cases cited in the footnote illustrates these points for all fifty states. [\*524] As the parentheticals in the footnote specify, many of these cases are local and involve local activity such as groceries, dairies, construction firms, and a varied list of manufacturers and retailers. The majority of the litigations assert claims for price-fixing and bid-rigging, but include other antitrust claims such as tying, monopolization, and exclusive dealing.

D. States Work Together with Federal Antitrust Enforcers

Even when states are not the lead or first-named plaintiff, states' participation adds value to the litigation, contributing to a more complete analysis. States help build a case by adding their knowledge of the local markets and familiarity with the local geography, help navigate through state agency and regulatory [\*525] overlays as in banking, health care, and insurance markets, and act as local counsel for their federal counterparts.

From the perspective of the state, committing resources to a joint investigation is eminently reasonable. The marginal benefit is often worth the marginal cost. Within the investigation or litigation, the state can push to accomplish state goals. Attorneys general can bring specific attorney general tools to bear for the investigation or litigation as a whole, including subpoena power and the right to seek civil penalties, disgorgement, and other remedies.

At the same time, a state's interest need not be protected only through joint action. Harm to the interests protected by the state can still occur if no other enforcer takes action. The federal antitrust laws give the attorney general the right to vindicate those interests. Deciding whether to take action can involve probing whether the harm to those represented by the state can be "fixed," even if the transaction restrains, benefits, or is neutral in the rest of the country. If parties refuse to "fix" the state's concern, that might illustrate that the transaction or restraint may be more about harming those represented by the state, as opposed to securing national or other benefits.

When acting with others, states often focus on the rights of consumers, including the right to recover damage. States' parens patriae authority is the superior means of securing relief, particularly when returning monetary relief to consumers. States have gained much experience and have the tools to return money directly to consumers. In *In re Compact Disc Minimum Advertised Price Antitrust Litigation*, for example, the states were instrumental in providing consumers with cash, while the FTC obtained injunctive relief. In 1996, the attorneys general of several states began an [\*526] investigation into whether distributors and retailers were illegally conspiring to stabilize or inflate or the prices of prerecorded music products through the adoption and implementation of Minimum Advertised Price ("MAP") policies. The FTC initiated a parallel investigation and obtained consent decrees against the distributor defendants in 2000. The states filed a complaint alleging that retailers and distributors conspired to fix the price of compact discs in violation of federal and state antitrust laws. The case settled and the states recovered cash payments of $ 67.4 million dollars, as well as $ 75.7 million dollars worth of compact discs.

States generally are better at getting consumers recovery than the competitive alternatives. The FTC's disgorgement remedy is used sparingly in antitrust matters. The U.S. Department of Justice does not seek to get money to consumers injured by antitrust violations. Federal enforcers simply do not -- and probably should not -- focus primarily on the monetary claims of consumers. When interacting with private counsel, states have pushed for greater consideration of consumers' interests. In the pharmaceutical cases representing end users, states have focused on consumers' interests, while class counsel focus on interests of third party payers. In the vitamins antitrust litigation case, class counsel and twenty-four states [\*527] represented indirect purchasers, including states and consumers, and recovered $ 335 million dollars.

Finally, any discussion of state enforcement from the perspective of the Antitrust Modernization Commission requires consideration of the litigation against Microsoft. Much of the commentary on state antitrust enforcement discusses the states' role in the monopolization litigation against Microsoft. Nonetheless, the litigation against Microsoft has generated commentary well beyond the relatively insular world of antitrust enforcement. Thomas Friedman has identified the litigation against Microsoft as illustrating the fundamental strength of our economy, in which even the most powerful and rich corporation can be required by poorly paid government enforcers to comply with the antitrust laws. The critics, on the other hand, decry any antitrust action "involving the [\*528] most valuable company in the U.S. economy." The passions extend to the work of the Commission -- the Washington Post reports that Commission is sympathetic to antitrust defendants in general and Microsoft in specific.

Much of this commentary lacks the broader perspective of the antitrust litigation against Microsoft. That broader perspective illustrates that the commentary focuses primarily on Microsoft being sued, not on the specifics of the antitrust claims. The federal antitrust monopolization investigation began in the Federal Trade Commission in 1990 and was transferred to the Antitrust Division of the United States Department, when the FTC reached a 2-2 deadlock and suspended the investigation. The first governmental antitrust litigation focused on Microsoft's acquisition of Quicken, which was resolved by consent decree. The district court judge, Stanley Sporkin, rejected the consent decree. The Antitrust Division appealed, the Court of Appeals reversed, and instructed that a different judge be assigned on remand, concluding that a "reasonable observer [would] question whether Judge Sporkin" could be unbiased.

The next round involved the monopolization claims. The states joined the Antitrust Division in investigating and prosecuting Microsoft. The cooperation and coordination among the government enforcers was detailed and long-standing, through trial and appeal. Microsoft was found by an en banc Washington D.C. Court of Appeals to have violated the antitrust laws and the new judge, Penfield Jackson, was also disqualified for the remand on remedies. After a change of administration in Washington, the [\*529] Antitrust Division and nine states (the "Settling States") reached a settlement with Microsoft. Nine states and D.C. rejected that settlement (the "Litigating States") and pursued a remedies trial. Those Litigating States got less relief than they sought, most accepted that determination, West Virginia appealed and then settled, and Massachusetts pursued the appeal to decision. The Court of Appeals and the district court both clearly held that Massachusetts was entitled to have its views heard. Both the Settling States and the Litigating States monitor the resolution with Microsoft, regularly reporting to District Judge Coleen Kollar-Kotelly. At the same, the European Commission investigated and is taking action against Microsoft.

The list of government employees who have been in the cross-hairs for criticizing Microsoft is stunning. The antitrust enforcers include the Federal Trade Commission, Antitrust Division of the Department of Justice, twenty states, nine litigating states, two appealing states, and the European Commission. We are aware of only one other instance in which a federal judge was disqualified in an antitrust prosecution brought by a government enforcer. Amazingly enough, Microsoft succeeded in disqualifying two.

In the broad scheme of things, the effort to ensure that Microsoft complies with the antitrust laws has been a monumental undertaking. We are proud that the states have tried to do their part.

V. Conclusion

States have enhanced consumer choice and fostered competition in small and large markets through investigation, litigation, and resolution of many antitrust matters. States have also furthered antitrust jurisprudence through litigation on both the state and federal levels. The litigation record could not be clearer as to the importance of state enforcement of the antitrust laws in our federalist system.

#### States have unique comparative advantages

Stephen Calkins 3, Professor of Law at Wayne State University, JD from Harvard Law School, BA from Yale University, “Perspectives on State and Federal Antitrust Enforcement”, Duke Law Journal, 53 Duke L.J. 673, November 2003, Lexis

1. Local Emphasis. State antitrust enforcement as reflected in this survey is overwhelmingly local. Challenged mergers involve hospitals, movie theaters, waste disposal operations, grocery stores, Jewish funeral homes, dairies, radio stations, gasoline stations, ski resorts, de-icing salt production facilities, and a sardine processing plant. Some of the mergers feature major national firms where a state is joining with a federal agency (grocery store mergers are a prime example), but it seems logical to draw on state-level expertise when examining street-level competition between stores. Challenged conspiracies involved travel agents and tour bus operators, health care providers, school bus companies, road builders, roofers, auto [\*689] body shops, dairies, group homes repairers, bakers of Italian bread, individuals who gave carriage rides, towers, and trash haulers. Tying violations, where the purchase of one product is illegally conditioned on the purchase of another, include mobile homes and tours of Alcatraz.

States play an important role by helping inform federal enforcers of local market realities and by helping persuade courts that federal enforcers have considered those realities. Missouri was a crucial partner of the FTC in challenging with temporary success a local hospital merger, and states have played important roles on their own or with federal enforcers in questioning other hospital mergers. On the other hand, federal enforcers failed to achieve even temporary success when New York supported a local hospital merger and when Michigan remained primly on the sidelines of a challenge to a Michigan hospital merger. Hospital mergers raise political issues that make them unusually difficult to challenge, but the federal [\*690] agencies face an uphill battle when the antitrust enforcer who knows the area best is opposed to an antitrust challenge.

2. Public Institutions. Not surprisingly, given the predominance of local issues, many of the matters involved state or local institutions; indeed, frequently an attorney general was representing an aggrieved public entity. According to attorneys general, schools were overcharged for milk, roofs, carpets, and fuel; local governments were overcharged for fuel, waste disposal, flooring, and ambulance services; and state agencies were overcharged for road building, infant formula, travel, and health care services.

States can be unusually effective at detecting and preventing these bid-rigging activities (agreements that prevent competition for government contracts theoretically allocated by competitive bid). Government procurement rules almost invite price fixing, because they make instantaneous the detection of "cheating" conspirators. States have worked effectively with purchasing authorities to deter and prosecute such illegality, returning money to the taxpayers and the victims of conspiracy. States and the federal government proceed criminally, as well, but government bid-rigging cases are particularly attractive examples of the importance of compensating victims.

Additionally, the states' special local ties are important in ways that go beyond representing government agencies victimized by conspiracy. Contact Lenses is an unusually good example. After a two-year investigation, Florida filed this lawsuit challenging an alleged industry boycott of alternative channels of distribution of contact lenses, and thereafter a total of thirty-five states and various [\*691] private parties worked for eight years successfully to resolve the matter. State agencies easily could have blocked alternative distribution channels, and, indeed, the defendants argued unsuccessfully that various state statutory and regulatory impediments had done so, thus depriving the defendants' acts of consequence. A key court decision denied summary judgment because it found a host of unresolved issues related to this defense, including "whether the states are actively enforcing their [regulatory] statutes." State attorneys general were unusually valuable defenders of the competitive process because they were uniquely well positioned to help persuade state agencies neither to block such distribution nor to support defense arguments that agency regulations had done so.

3. Compensation to Consumers. One of the states' most powerful competitive advantages - and one that they have been employing vigorously - is their ability to deliver substantial monetary recoveries directly to consumers. For example, in Compact Discs, about 3.5 million people will receive almost $ 13 apiece as their share of a settlement. This scale of distribution of a modest sum was possible only because the states implemented an innovative web- [\*692] based claim submission. In Bristol Myers-Squibb, the FTC settled a case against a pharmaceutical firm that allegedly abused the patent system to block entry of generic competition. The states deferred to the FTC's lead in crafting injunctive relief, but are expected to recover over $ 150 million. In another generic drug case, Cardizem, the defendant pharmaceutical companies agreed to pay $ 80 million to compensate consumers, state agencies, and insurance companies for overcharging them (in addition to $ 110 million won by private drug wholesalers). In Contact Lenses, more than 18,000 checks have been processed, from a total cash-and-coupon settlement of $ 90 million. In Vitamins, state attorneys general won two settlements - $ 30 [\*693] million for their own purchases and (with private plaintiffs) $ 225 million for indirect business and individual purchasers - and California won an additional $ 85 million. In Mylan, the FTC and the states worked together to resolve the case. The FTC received an unusual disgorgement remedy, but the vast bulk of the $ 147 million recovery was distributed by the states.

The FTC has recognized that it lacks the experience and resources to distribute efficiently competition-based disgorgement funds. It has used this authority "cautiously" and "sparingly," employing it in only a handful of cases. In the Commission's two recent exercises of this authority, it has combined the funds it recovered with other funds in a single claims administration process (such that, in Mylan, the states distributed even the FTC's portion of the recovery). Beyond that, the states' ability to represent the public, including under state law, simplifies litigation (and settlement discussions) by removing a series of standing/Illinois Brick issues from the table.

### Opiods Adv

#### Defense teams will stall legal proceedings long enough to trigger their internal links

Jones and Kovacic 20 [Alison Jones and William E. Kovacic, Alison Jones is Professor of Law at King’s and a solicitor at Freshfields Bruckhaus Deringer LLP; William Evan Kovacic is an American lawyer and legal scholar who was a commissioner of the U.S. Federal Trade Commission from 2006 to 2011. Kovacic is a professor at George Washington University Law School and the director of their Competition Law Center, "Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy", The Antitrust Bulletin 2020, Vol. 65(2) 227-255 <https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884>]LPAL

Opposition to Legislative Reform Although statutory reform might at first sight appear to be a direct, effective solution to some of the impediments (such as entrenched judicial resistance to intervention), there are good reasons to expect that powerful business interests will also stoutly oppose any proposals for legislation to expand the reach of the antitrust laws or to create a new digital regulator.128 One can envisage the formidable financial and political resources of the affected firms will amass to stymie far-reaching legislative reforms. Legislative steps that threaten the structure, operations, and profitability of the Tech Giants and other leading firms are fraught with political risk. These risks are surmountable, but only by means of a clever strategy that anticipates and blunts political pressure. One element of such a strategy is to mobilize countervailing support from consumer and business interests to sustain an enabling political environment to enact ambitious new laws. Even if successful, “[l]egislative relief from existing jurisprudential structures might take years to accomplish”;129 acts taken under new legislation—even with the establishment of presumptions that improve the litigation position of government plaintiffs—may still be relatively complex and difficult to prosecute. Rulemaking is an alternative to litigation, but it is no easy way out of the problem. On the contrary, promulgation and defense, in litigation, of a major trade regulation rule is liable to take as long as the prosecution of a Section 2 case. It can also be anticipated that a judiciary populated with many regulation skeptics will subject new rules or related measures to demanding scrutiny.

#### Cartel diversification and violence inevitable --- opioids not key

EVELYN KRACHE Morris 13, International Security Program fellow at the Belfer Center for Science and International Affairs at the John F. Kennedy School of Government, Harvard University, Think Again: Mexican Drug Cartels, http://foreignpolicy.com/2013/12/04/think-again-mexican-drug-cartels/

Drugs are just the tip of the iceberg. In the popular U.S. television series *Breaking Bad*, about a high school teacher turned methamphetamine kingpin, there was an instructive exchange. When the show’s antihero, Walter White, was asked whether he “was in the meth business or the money business,” he replied, “I’m in the empire business.”¶ The same can be said of the DTOs, which are independent and competing entities — not an association like OPEC. The sale of cocaine, heroin, marijuana, and meth remains extremely profitable. The U.S. Justice Department has put the cartels’ U.S. drug trade at $39 billion annually. But the DTOs have diversified their business considerably, both to increase their profits and to exclude rivals from new sources of revenue. For example, they are dealing increasingly in pirated intellectual property, like counterfeit software, CDs, and DVDs. The most destructive new “product,” however, is people. The cartels have built a multibillion-dollar business in human trafficking, including the shipment of both illegal immigrants and sex workers.¶ What the DTOs are really selling is logistics, much like Wal-Mart and Amazon.com. Wal-Mart was one of the first retailers to run its own fleet of trucks, providing tailored shipping at a lower cost that in turn gave the company an edge over its competitors. Similarly, Amazon may have started as a bookseller, but its dominance, as *Fast Company* put it, is “now less about what it sells than how it sells,” providing a distribution hub for all sorts of products. Drug-trafficking organizations are using the same philosophy to cut costs, better control distribution, and develop new sources of revenue.¶ The one element of the U.S.-Mexico relationship that has received no shortage of attention is the border, yet the technology and money dedicated to enhancing security there have not been enough to thwart creative DTOs. The Sinaloa cartel, for example, has an extensive network of expertly constructed tunnels under the border, some featuring air-conditioning. (The workers who build the tunnels are frequently executed after the work is completed.) At the other extreme, traffickers have used catapults to launch deliveries from Mexico into the United States.¶ Logistics, then, are the DTOs’ main source of revenue, and illegal drugs are but one of the products they offer. As the cartels’ revenue streams become increasingly diversified, the drug trade will become less and less important. In fact, the prospect of the DTOs’ selling their services to terrorists, say by transporting weapons of mass destruction across the U.S.-Mexico border, has begun to frighten analysts both inside and outside government.¶ “But the Violence Is Unique to the Drug Trade.”¶ No. The most brutal DTO battles are not over customers or suppliers but over ports and trade routes. The Mexican state of Michoacán, with its large Pacific port of Lázaro Cárdenas, has suffered a surge in violence as the remnants of La Familia Michoacana and the rising Los Caballeros Templarios fight for dominance. This May, Los Caballeros Templarios ambushed and shot 10 farmers after they met with government officials to protest cartel extortion. As one farmer described the DTO, “It’s like a monster with a thousand arms.”¶ Brutality on Mexico’s borders is also largely a function of logistics, or so the pattern would suggest. On the U.S.-Mexico border, for instance, the city of Nuevo Laredo has been racked by violence for over a decade. Not coincidentally, the city’s northern edge lies less than a mile from Interstate 35, a north-south highway running through Dallas, Kansas City, and Minneapolis and connecting to major east-west routes. Mexico’s southern border has also seen a spike in violent crime, as the cartels move their products — guns, cocaine from Colombia, and immigrants from Central America — north to the United States.¶ Cartels also use violence to further less concrete objectives. Spectacular acts, such as rolling severed heads onto a nightclub dance floor (as La Familia Michoacana did in 2006), are designed to shock and frighten, not to move product or attract customers. Assassinating the family of a Mexican marine who had participated (and been killed) in a raid against a DTO, as happened in late 2009, was an unambiguous threat against all law enforcement personnel. And the DTOs regularly threaten and kill reporters — Mexico is the fourth most dangerous nation in the world for journalists (behind only Syria, Somalia, and Pakistan), according to Reporters Without Borders — both to prevent the release of specific information about cartel activities and to discourage reporting on them in the first place. A recent narcomanta (“drug banner”) posted over two bodies hanging from a highway overpass in Nuevo Laredo sent a clear message: “This is going to happen to all of those posting funny things on the Internet.… I’m about to get you.”¶ Violence, in other words, is not a function of the drug trade specifically. It is how the cartels manage everything from marketing to public relations to human resources.¶ “At Least the Violence Is Contained to Mexico.”¶ ¶ Not at all. This past February, the Chicago Crime Commission named Joaquín “El Chapo” Guzmán Loera, the leader of the powerful Sinaloa cartel, “Public Enemy No. 1” — the first person to receive the designation since Al Capone. The number of homicides in Chicago through early September 2013 was 27 percent higher than in New York, and its murder rate was 49 percent higher than Los Angeles’s. Jack Riley, head of the U.S. Drug Enforcement Administration’s Chicago office, has ascribed the city’s unusually high murder rate to drug-related turf wars sparked by Sinaloa’s growing presence in the city. The centrality of Chicago to air, rail, and road transportation networks, as well as the city’s large Mexican immigrant community, make it an important node for drug distribution.¶ ¶ Despite what’s happening in Chicago and other U.S. cities, there has been almost no appetite at the federal level for tracking the effects of the DTOs on domestic crime. Proponents of immigration reform have no wish to promote stereotypes of immigrants as dangerous criminals. Advocates for higher and longer border fencing acknowledge the danger but prioritize major cities and more populated areas, failing to realize that this tactic simply shifts cartel operations to remoter areas that are harder to control. Governors of states that border Mexico have little interest in drawing attention to crime that results from their inability to contain the DTOs. And Washington does not want to antagonize the Mexican government over its law enforcement shortcomings, particularly given that Mexico’s cooperation is critical to addressing a host of other issues, such as immigration.¶ ¶ While Washington looks the other way, cartel activity in the United States is only getting worse. To keep their operations going, the DTOs have been engaging in money laundering and bribery on both sides of the border. In September 2013, for example, a federal jury in Austin, Texas, sentenced three men involved in laundering Los Zetas money in the United States — including a brother of the cartel’s notorious leader — to lengthy prison sentences.¶ ¶ The DTOs’ reach is extending ever farther into the United States. Like many successful legal businesses, the cartels are vertically integrating. Instead of merely selling meth, for example, DTOs like Sinaloa now manufacture the drug using chemical precursors they import from Asia. This, alongside new laws that have made it harder to acquire precursors in the United States, has driven “mom and pop” meth producers in the United States out of business, as they cannot compete on price or quality with the product from Mexico. The integration goes down the supply chain as well. Part of the reason that Chicago law enforcement officials are so alarmed by El Chapo is that Sinaloa no longer outsources its retailing to local dealers but is taking an ever more active role in selling the product in the United States. And that means that cartel-related crime is only going to get worse.¶ ¶ “The Problem Is the War on Drugs.¶ Legalization Would Help.”¶ Hardly. Legalization has become an increasingly popular, if still controversial, proposal among those who think that the costs of the war on drugs have overwhelmed the benefits, including some Central and South American leaders, like Guatemalan President Otto Pérez Molina. But because DTOs are dealing in far more than just illegal drugs, the disappearance of one revenue stream would not eradicate the cartels or decisively erode their power.¶ Even if the cartels were dependent on drug money, which they aren’t, the idea that legalization is a binary switch that would cut off profits from the drug trade is fundamentally flawed. In the context of drugs like marijuana, “legalization” implies wide availability and fairly easy access, but it is highly unlikely that the U.S. government would remove all, or even many, restrictions on drugs like ecstasy or heroin, leaving the cartels’ business in those narcotics intact.¶ What’s more, even legitimate drugs can spur illicit trade if they are in high demand but the supply is tightly controlled. Drugs like oxycodone, a highly addictive painkiller, are legally manufactured and sold in the United States, but “oxy” is strictly regulated under Schedule II of the 1970 Controlled Substances Act. Those restrictions gave rise to a thriving black market in the drug, with prices reaching as high as $150 per pill.¶ Licit drugs can also create highly profitable arbitrage opportunities for enterprising criminals if the laws that govern their distribution differ from state to state, as would likely be the case if marijuana or other drugs were widely legalized. Cigarettes are legal, yet interstate cigarette smuggling makes a great deal of money for organized crime; because of differing state tax rates, the opportunity for profit is substantial. Virginia, for example, which has among the lowest cigarette taxes in the nation, is grappling with increased criminal activity, because of trafficking to high-tax states like New York and New Jersey. (And Virginia’s hardly the only one; other states, like Texas, have even seen armed hijackings of cigarette trucks.)

#### The modern gangs that matter for stability have shifted to kidnapping, extortion, mining and a laundry list of other criminal activities

Alejandro Hope 15, Project Director for the 'Less Crime, Less Punishment' project at the Wilson Center, “Why Kidnapping, Extortion Boomed in Mexico,” 11/19/15, http://www.insightcrime.org/news-analysis/why-kidnapping-extortion-boomed-in-mexico

By turning to kidnapping and extortion, the fragmented remains of Mexico's drug cartels found a new way to support themselves without focusing on transnational drug trafficking. That's why the future of Mexican organized crime isn't someone like El Chapo -- it's splinter groups like the Guerreros Unidos.

Twenty years ago, to be a mafioso in Mexico meant being a drug trafficker. Here there was no "organized crime," only "narco." Kidnappers, extortionists and bandits existed, of course, just as they always have, but they played on a different field. The criminal big leagues were taken up by gangs dedicated to moving drugs, crossing borders and dodging customs agents. They were sophisticated, identifiable, connected to the world, and had the ability to put even an anti-drug czar on their payroll.

This article was originally published by El Daily Post and is republished with permission. It is the latest installment in a journalism project called NarcoData, developed by Animal Politico and Poderopedia, which seeks to explain the evolution and growth of organized crime in Mexico. See the original here.

But such a Tigres del Norte scenario started to change in the '90s. The business became decidedly more complicated. Besides the usual marijuana and heroin, cocaine began to arrive in industrial quantities and methamphetamine came into the picture. The change brought with it two problems.

First, the entire issue became more public, making government tolerance more difficult. The publicity problem was exacerbated by the American government issuing certifications every year, and even more so as the Kiki Camarena case stayed in the rearview mirror. The spotlight demanded that one capo or another had to fall from time to time, and one shipment or another had to end up in the Federal Attorney General's Office's warehouses.

Second, and probably more important, internal control grew more difficult for the narco leaders. More drugs moving means more drugs to steal. Inevitably, more than one gang member felt the temptation to slip a hand into a package, or to tip off a rival (for a price) as to where a shipment was heading, or where a warehouse was located.

The result was a growing militarization of the drug trafficking groups. As is well known, the pioneer of this strategy was Osiel Cardenas Guillen, head honcho of the Gulf Cartel. Toward the end of the '90s, he recruited elite military personnel — the Zetas — and turned them into his Praetorian Guard. Soon, other gangs followed suit: Sinaloa with its Gente Nueva, Juarez with La Linea, the Beltran Leyva Cartel with its Negros and its Pelones, and its FEDA (Spanish initials for Arturo's Special Forces, Arturo being the first name Beltran Leyva usually used).

That strategy not only escalated the conflict between rival drug traffickers, it also changed the balance of power within the individual organizations. The smuggling wizards were gradually pushed aside by the violence specialists.

The latter, now-dominant, soon figured out that drug trafficking opened up other criminal opportunities. There they were with plenty of men, weapons, vehicles, safe houses and bought-off authorities — why not take advantage of all that and get into kidnapping? Or extortion... first targeting other criminals, then the public at large? After all, the marginal costs were zero.

What's more, it was a good way to reduce labor costs: Payment to the hired killers could be kept at a minimum by instead giving them permission to kidnap, extort and steal (always with a cut for the higher-ups, of course).

So toward the end of the Vicente Fox administration (2000–2006), what had once been gangs specializing in drug trafficking had turned into diversified criminal consortiums. Some of the gangs, such as the then-newly formed Familia Michoacana, born out of a split in the Gulf Cartel, were already more involved with plunder than with illicit merchandise.

That development exacerbated the organizations' visibility problem; secrecy is not much of an option when you're out there extorting every day. Worse, it changed the relationship between the crime organizations and the communities — tolerance and indifference turned into calls for help.

Eventually, as Calderon moved out of the presidency in December of 2012, the new business logic triggered a government intervention marked by a hitherto unseen ferocity. Violence took off, capos began to fall, and lieutenants felt they were ready to take over as capos. The once hierarchical and identifiable organizations began to break into thousands of pieces. From the Beltran Leyva organization emerged at least seven groups, nine from the Zetas and a dozen from the Gulf Cartel.

Those new organizations — which were really more like splinter groups, though they presumed sometimes to call themselves cartels — possessed neither the international contacts nor the logistical sophistication to carry out major drug trafficking operations. But they did have weapons, men and a strong inclination toward violence. And toward extortion, as mentioned. And toward kidnapping. And stealing. And denuding hillsides with illegal logging. And looting mines. And anything else that generates cold, hard cash.

When pillage becomes a business, local politics is suddenly the center of attention. Municipal government became an irreplaceable source of information: Who's in charge of what? Who wants to start a new business? Who applied for a building permit, or a license, or a whatever?

Local government also turned out to be a convenient supplier of muscle. Why hire assassins if you already have the local police at your beck and call? Mayors, for their part, had the option of being accomplices or prisoners of the gunmen. Plata o plomo. Silver or lead. Or both, in grim succession.

However, when criminals take over the daily lives of ordinary citizens, unexpected sources of courage sometimes pop up. In some places, most dramatically in Michoacan, residents abandoned those useless calls for help in favor of armed resistance. And yes, here and there they actually defeated the criminals and recovered a semblance of peace.

In other cases, though, the informal forces of justice ended up turning into what they were supposedly fighting against — that is, delinquent groups no different than the previously existing crime organizations.

So here we are. We still have the giant cartels, dedicated to drug-trafficking and plugged into the international markets. El Chapo is still there, so are El Mayo and El Mencho.

But they represent organized crime's past in Mexico. The future is Guerreros Unidos and Los Rojos. The future is H3 and the Metros and the Viagras. The future is all the other groups that are something more than local gangs and something less than cartels — local in scope, diversified, and more interested in exploiting local economies than in supplying foreign consumers with drugs (though some also go that route).

#### Alt causes to instability, but no impact.

Seelee and Shirt 10– **\***director of theMexicoInstitute at the Woodrow Wilson International Center for Scholars AND \*\* fellow at the center and an associate professor at the University of San Diego (Andrew Selee, David Shirk, 3/27/10, " Five myths about Mexico's drug war ", Washington Post, http://www.washingtonpost.com/wp-dyn/content/article/2010/03/26/AR2010032602226.html)

The country has certainly seen a big rise in drug violence, with cartels fighting for control of major narcotics shipment routes -- especially at the U.S. border and near major seaports and highways -- and branching into kidnapping, extortion and other illicit activities. Ciudad Juarez, in particular, has been the scene of major battles between two crime organizations and accounted for nearly a third of drug-linked deaths last year. But the violence is not as widespread or as random as it may appear. Though civilians with no evident ties to the drug trade have been killed in the crossfire and occasionally targeted, drug-related deaths are concentrated among the traffickers. (Deaths among military and police personnel are an estimated 7 percent of the total.) A major reshuffling of leaders and alliances is occurring among the top organized crime groups, and, partly because of government efforts to disrupt their activities, violence has jumped as former allies battle each other. The bloodshed is also geographically concentrated in key trafficking corridors, notably in the states of Sinaloa, Chihuahua and Tamaulipas. While the violence underscores weaknesses in the government's ability to maintain security in parts of the country, organized crime is not threatening to take over the federal government. Mexico is not turning into a failed state.

#### No Mexican state collapse -- experts

Daudelin, 12 - Professor @ Carleton, development and conflict (Jean, “The State And Security in Mexico” http://books.google.com/books?id=o-Tu81Bq6s4C&pg=PA127&lpg=PA127&dq=mexico+state+collapse&source=bl&ots=Yhx\_8YtFb4&sig=pa7WFUmTZL9ABazqwXvl8euUKw&hl=en&sa=X&ei=46UHVNGWOIfxgwSRlYDACg&ved=0CB8Q6AEwATgU#v=onepage&q=mexico%20state%20collapse&f=false)

A careful look at the evidence and the fact that the U.S. seems to be disengaging from what has ultimately been a limited involvement in the region's drug and organized-crime scene suggests that, from whichever angle one looks at the problem, the latter does not represent a very significant threat to U.S. security. In that context, a sizable increase in Canada's involvement can hardly be justified by the dangers the problem represents to its main ally. The prospects of narco-traffickers provoking a state collapse in Mexico are essentially nonexistent, notwithstanding alarmist declarations by some U.S. public officials.14 No reputable expert on the country has supported that view.54 Such prospects for Guatemala, Honduras, or even El Salvador are much less far-fetched, however, which is why an effort is currently being made by the World Bank, the European Union, the U.S., and Canada to bolster the region's governments\* individual and collective capacity to confront the organized-crime challenge." It is difficult to argue, however, that the emergence of a narco-state or some kind of state collapse in Central America and the Caribbean would represent a significant threat for Canada itself. These regions—Central America and Haiti in particular—have long been plagued by corruption, violence, and instability and have previously-seen long episodes of civil war without any ripple effect on Canada. Were such developments to occur, they would create, relative to North America, the situation that currently exists in the urban peripheries of large Latin American countries, such as Colombi

#### No leadership impact---empirics.

Fettweis 20, Associate Professor of Political Science at Tulane University. (Christopher J., 6-3-2020, "Delusions of Danger: Geopolitical Fear and Indispensability in U.S. Foreign Policy", *A Dangerous World? Threat Perception and U.S. National Security*, https://www.cato.org/publications/publications/delusions-danger-geopolitical-fear-indispensability-us-foreign-policy)

Like many believers, proponents of hegemonic stability theory base their view on faith alone.41 There is precious little evidence to suggest that the United States is responsible for the pacific trends that have swept across the system. In fact, the world remained equally peaceful, relatively speaking, while the United States cut its forces throughout the 1990s, as well as while it doubled its military spending in the first decade of the new century.42 Complex statistical methods should not be needed to demonstrate that levels of U.S. military spending have been essentially unrelated to global stability.

Hegemonic stability theory’s flaws go way beyond the absence of simple correlations to support them, however. The theory’s supporters have never been able to explain adequately how precisely 5 percent of the world’s population could force peace on the other 95 percent, unless, of course, the rest of the world was simply not intent on fighting. Most states are quite free to go to war without U.S. involvement but choose not to. The United States can be counted on, especially after Iraq, to steer well clear of most civil wars and ethnic conflicts. It took years, hundreds of thousands of casualties, and the use of chemical weapons to spur even limited interest in the events in Syria, for example; surely internal violence in, say, most of Africa would be unlikely to attract serious attention of the world’s policeman, much less intervention. The continent is, nevertheless, more peaceful today than at any other time in its history, something for which U.S. hegemony cannot take credit.43 Stability exists today in many such places to which U.S. hegemony simply does not extend.

### Econ Adv

#### Health care spending doesn’t damage economy

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John R. Graham, a public-policy analyst, is Director of the Health Technology Forum: DC; and a Senior Fellow at the National Center for Policy Analysis; “The U.S. Health System Is Not An Economic Burden” 4-20-16; Forbes, <https://www.forbes.com/sites/theapothecary/2016/04/20/the-u-s-health-system-is-not-an-economic-burden/#50b6d8bd2832>, DOA 9-7-17-SH)

Health spending consumes a higher share of output in the United States than in other countries. In 2013, it accounted for 17% of Gross Domestic Product. The next highest country was France, where health spending accounted for 12% of GDP. Critics of U.S. healthcare claim this shows the system is too expensive and a burden on our economy, demanding even more government intervention. This **conclusion is misleading and leads to poor policy recommendations**, according to new research published by the National Center for Policy Analysis (U.S. Health Spending is Not A Burden on the Economy, NCPA Policy Report No. 383, April 2016). Discussing health spending in dollars, rather than proportion of GDP, the report notes Americans spent $9,086 per capita on healthcare in 2013, versus only $6,325 in Switzerland, the runner-up. (These dollar figures are adjusted for purchasing power parity, which adjusts the exchange rates of currencies for differences in cost of living). This big difference certainly invites us to question whether we are getting our money’s worth. **However, it is not clear that this spending is a burden on Americans, given our very high national income.** After subtracting health spending from U.S. GDP, we still had $44,049 per capita to spend on all other goods and services we value. **Only two countries, Norway and Switzerland, beat the United States on this measure**. **But compared to larger developed countries, Americans have higher income per capita after subtracting healthcare spending.** For example, in the United Kingdom, GDP per capita after health spending was only $34,863 in 2013. So, even though Americans spent significantly more on healthcare than the British, the average American enjoyed $9,185 more GDP after health spending than his British peer; and just under $6,000 more than his Canadian neighbor. Britain socialized its health system shortly after World War II, completing the work by 1948. Canada’s healthcare was more gradually socialized by provincial and federal governments during the period 1947 through 1966. Many assert these so-called single-payer systems relieved the burden of private payment from citizens and made the economy more productive. On the contrary: Since 1960, the U.S. economy has outperformed all comparable developed countries except Norway and Switzerland with respect to economic growth, after subtracting health spending. From 1960 through 2013, the share of U.S. GDP allocated to healthcare more than tripled. However, this had no impact on the ability of the U.S. economy to deliver high GDP per capita, outside healthcare. Adjusted for purchasing power parity, U.S. health spending increased $8,937, while GDP per capita increased $50,269, from 1950 through 2013. Thus, GDP per capita available for other goods and services, after spending on health care, increased $41,332, or $780 per year. Over these 53 years, only Norway and Switzerland increased their non-health GDP per capita more than the United States. Norway, which had become a petro-state due to revenue gushing from the North Sea oilfields, increased this amount by $57,981, which is $16,649 more than the United States, or $314 more in non-health spending per year per person. The report concludes the theory that health spending influences economic growth for better or worse is too simple. In fact, wages, prices and resources allocated to healthcare are a consequence of economic activity in other parts of the economy, as well as health policy. Further, whether the system is defined as “universal” or “single payer” may be less important than other characteristics in determining how the system performs. The report ranks 13 developed countries by the share of health spending that is controlled directly by patients out-of-pocket versus the share controlled by third-party bureaucracies, either private or public. With only 12% of health spending controlled by patients directly, the U.S. ranks ninth by this measure. Swiss patients directly control over one-quarter of their health spending. Even Canadians, who live under a tightly closed, government monopoly, so-called “single-payer” system, control a somewhat higher share of their own health spending than Americans do. Because most other countries allow patients to control a higher share of health spending than the United States does, the report concludes this is likely another factor keeping health spending lower than in the United States.

#### Antitrust can’t solve price spikes

Alan Friedman 15, educated at New York University (NYU) (B.A. Politics and History), the London School of Economics (International Relations) and the Johns Hopkins School of Advanced International Studies (M.A. International Economics and Law), 5-18-2015, "From the antitrust mailbag: What can the FTC do about prescription drug price spikes?," Federal Trade Commission, <https://www.ftc.gov/news-events/blogs/competition-matters/2015/05/antitrust-mailbag-what-can-ftc-do-about-prescription>

We’ve examined this issue a number of times and often found that price changes (up or down) are due to **normal market forces** and thus **do n**o**t present** an antitrust **issue**. One common cause of a sudden spike in the price of a drug is the development of a supply problem, such as an **ingredient shortage**. It’s a normal market event for prices to rise after a fall in supply. The U.S. Food and Drug Administration has the **authority to address** and prevent **drug shortages**, and that agency maintains a list of drugs that are in short supply, including the market reason for the shortage and the estimated time required to resolve the shortage. When there is no supply problem, sometimes the answer is that the drug was recently acquired by a company, and the **new owner** has **independently increased the price**. Other times, the price varies from retailer to retailer, or is due to a coverage change by the pharmacy benefit manager. In these situations, the drug may be available at a better price at another retailer or from another health plan.

For our part, we remain watchful for information that suggests the possibility that unlawful anticompetitive activity is the reason for a price increase. Although the FTC has no authority to regulate the price of any product, including prescription drugs, protecting American consumers from anticompetitive activity in the health care sector has long been one of our most important responsibilities. Congress has empowered the FTC to prevent unfair methods of competition, such as illegal anticompetitive agreements among competitors to increase prices or restrict supply, and illegal exclusionary or predatory practices.

For example, several years ago, the FTC and 32 state Attorneys General sued a drug manufacturer and the only suppliers of a key ingredient for signing illegal agreements that increased wholesale prices of two widely-prescribed anti-anxiety drugs by 2000-3000 percent. The FTC alleged that the drug maker, Mylan Laboratories, Inc., and three suppliers of a key ingredient entered into exclusive supply contracts to deny Mylan’s competitors access to ingredients necessary to manufacture the drugs. In exchange for their participation in the scheme, Mylan agreed to share its profits with the suppliers, and then raised the price of the drugs exponentially — in the case of one product, from $7.30 for a 500-count bottle to $190. The FTC’s antitrust suit led to one of the largest monetary settlements in FTC history, with $100 million returned to overcharged consumers and state agencies. The companies also agreed not to engage in similar unlawful conduct in the future.

Congress also has empowered the FTC to prevent mergers that may substantially lessen competition or tend to create a monopoly. In reviewing proposed mergers between pharmaceutical companies, the FTC looks to see if the two companies have competing products and whether the elimination of one independent competitor may lead to higher prices for an essential therapy or course of treatment. Since last year alone, the FTC has required divestitures in **ten merger cases** involving dozens of pharmaceutical products, including over-the-counter motion sickness medications, nicotine patches, generic eye drops, Retin-A for the treatment of acne, and generic multivitamin fluoride drops for children in the United States who do not have access to fluoridated water, as well as drugs that treat hypertension and bacterial infections. These divestitures preserve competition, ensuring that consumers do not pay higher drug prices as a result of the merger.

#### COVID thumps econ BUT it’s resilient

R. David Ranson 20, Research Fellow at the Independent Institute and the President and Director of Research at HCWE Inc., “Resilient US Economy Has Overcome the COVID-19 Recession”, Independent Institute, 10/9/20, <https://www.independent.org/news/article.asp?id=13290>

Though the president and first lady weren’t able to dodge the COVID-19 bullet, the U.S. economy, we now know, has adapted remarkably well to the pandemic and social distancing. As a result, the worst of the COVID-19 recession is over.

Fear pushed public and even professional opinion to be bearish about the prospects of economic recovery. On both sides of the aisle, it became commonplace to assume that economic vitality depended largely on financial aid from Washington.

Therein lies a Catch-22 that’s keeping us from paying attention to the economy’s rebound. If markets and the economy recover or perform well, the conventional wisdom attributes this to government “stimulus.” If they stagnate or perform poorly, it’s attributed to Washington’s sloth and stinginess. In short, we’ve been too focused on vulnerability—and the perceived need for artificial stimulation—and not focused enough on resilience.

Real GDP dropped like a stone in the second quarter (April-June) of 2020, at a record annual rate of 31.7%. The great majority of forecasters did not anticipate that we could recover from such a blow anytime soon—even taking into account unprecedented government largesse. Their predictions of sustained weakness are being overtaken by events.

Weeks ago the largest component of gross domestic product, consumer spending, already had bounced back to pre-pandemic levels, recovering twice as fast as employment or industrial production. Within just two months, May and June, retail sales had completed a full round trip. In July and August they rose further.

How well does this good news reflect the economy as a whole? That requires an estimate of GDP itself. With forecasters in broad disagreement, it might seem that we’ll have to wait until third quarter results are in.

Happily, thanks to the Center for Quantitative Economic Research at the Federal Reserve Bank of Atlanta, there’s now a more timely source of information, unavailable in past downturns, and derived from real-time hard data: the bank’s GDPNow estimate. As of Sept. 24 the GDPNow team calculated third-quarter annualized growth of 32%.

This figure exceeds all but three of the 62 forecasts in The Wall Street Journal’s September survey of forecasters, and reflects a huge upward revision from GDPNow’s earliest estimate at the end of July.

Such quarter-to-quarter growth would be twice the record set by the Korean War buildup. And it implies that the economy already had recaptured three-fourths of its second-quarter collapse in a single quarter.

The speed and vigor of the U.S. rebound can be interpreted in two contrasting ways. One is that federal intervention has been much more effective than expected. There will be no shortage of politicians waiting to take credit for that. The other is that, collectively, virtually all of the so-called experts underestimated the economy’s intrinsic resilience.

Back in the days when federal “stimulus” was puny by today’s standards, GDP already showed an ability to bounce back from drastic financial shocks, natural disasters, widespread strikes and global crises. To paraphrase Independent Institute senior fellow Richard Vedder, professor emeritus of economics at Ohio University, perhaps the most impressive example is the economic transition following demobilization at the end of World War II. Millions of military personnel became jobless within months and military spending plummeted. But the economy’s resilience came to the rescue and the predicted sharp rise in overall unemployment never occurred.

It’s not clear whether government “stimulus” funds add to or subtract from the economy’s resilience. Relief to those among the newly unemployed who are too pressed to fend for themselves may actually help them become more resilient. On the flip side, moderate deprivation may be a greater spur to self-reliance, encouraging the unemployed to seek work rather than temporary income from government.

Either way, the resilience of the U.S. economy is overpowering the COVID-19 recession, which soon could be history.

#### Their China lead bad card doesn’t say anything---but here’s defense anyway that post-dates by 5 years

Carlo Catapano 21, PhD Candidate in International Studies at the University of Roma Tre, MSc in International Relations of the Americas at UCL, “Book Reviews: Unrivaled: Why America will Remain the World’s Sole Super-power, by Michael Beckley. Ithaca: Cornell University Press, 2021, pp. 231.”, Interdisciplinary Political Studies, Volume 7, Number 1, p. 249-252

Moving on to the emerging rivalry between China and the United States, Beckley acknowledges that the Asian giant is its most likely challenger. However, his detailed evaluation of Beijing’s economic and military resources leaves no room for doubts: China lags behind the US on almost every net indicator, and the gap between the two is unlikely to vanish any time soon. This conclusion is surprising if one considers the constant references – in academia and the media – to China’s rise and the Asian century. Beckley points out the weaknesses of the Chinese economy (Chapter 3), the hidden costs for a large, populous and developing country that are not included in gross estimates, and the various advantages that the US economic system still owns despite the limited growth of the post-2008 period.

Similarly, he compares (Chapter 4) the net military capabilities of the two powers by subtracting, for example, the costs to maintain security at home from their overall military assets. Also, he addresses the geopolitical factors that separate the US and Chinese ability to project their military power abroad. From this analysis, it emerges that China’s position is severely constrained by the high costs paid to assure its internal security and the defense of its national borders as well as by the welfare costs associated to the large number of troops composing the People’s Liberation Army. Beckley argues that China’s rising military capabilities are also constrained by the continued presence of US outposts in the region and the improvements made by China’s neighbors to their own military forces. Overall, this assessment leaves few chances for Beijing to obtain the regional hegemony that it would need to challenge the US on a global scale.

Beckley’s analysis also indicates the path forward (Chapter 5), starting from the rejection of the theories usually employed to predict the fate of US power (balance-of-power theory and “convergence” theory). All indicators suggest that the US will retain its role of leading global power in the coming years, notwithstanding China’s uninterrupted rise. Beckley is eager to point out, however, that this conclusion should not be confused with the praise of American superiority or invincibility. At no point, does his analysis suggest that Washington’s primacy is uncontestable or destined to last forever. Instability with weaker countries, unnecessary wars, internal polarization and disunity, can all produce unpredicted losses and undermine the position of the most powerful country in the world (Chapter 6). Beckley’s argument, therefore, consists in a re-evaluation of the sources of power that have guaranteed the US primacy since the end of the Cold War. Those same sources still place the United States in a category of its own, apart from the other great powers of the system. This book’s claim, in the end, is about the duration of the unipolar era, which it predicts will last more than usually expected, not about the infallibility or moral virtues of US power.

A few years later on the publication of this book, its central tenets are even more relevant. Events such as Trump’s nationalist policies, the trade war with China, the COVID-19 outbreak seem to have accelerated history and the shift away from the post-Cold War unipolar configuration. Beckley’s work, however, invites to reject simplistic predictions about the dismissal of US primacy. The decline in Washington’s global influence as well as the retrenchment from its international responsibilities do not necessarily mean that its net position in terms of material capabilities has collapsed or that a condition of power parity with China has finally emerged. Even if outcomes are not favorable to US interests, it does not mean that US power has vanished. This is a relevant reminder for policymakers in both Washington and Beijing.

### Innovation Adv

#### Disease can’t cause extinction

Dr. Toby Ord 20, Senior Research Fellow in Philosophy at Oxford University, DPhil in Philosophy from the University of Oxford, The Precipice: Existential Risk and the Future of Humanity, Hachette Books, Kindle Edition, p. 124-126

Are we safe now from events like this? Or are we more vulnerable? Could a pandemic threaten humanity’s future?10

The Black Death was not the only biological disaster to scar human history. It was not even the only great bubonic plague. In 541 CE the Plague of Justinian struck the Byzantine Empire. Over three years it took the lives of roughly 3 percent of the world’s people.11

When Europeans reached the Americas in 1492, the two populations exposed each other to completely novel diseases. Over thousands of years each population had built up resistance to their own set of diseases, but were extremely susceptible to the others. The American peoples got by far the worse end of exchange, through diseases such as measles, influenza and especially smallpox.

During the next hundred years a combination of invasion and disease took an immense toll—one whose scale may never be known, due to great uncertainty about the size of the pre-existing population. We can’t rule out the loss of more than 90 percent of the population of the Americas during that century, though the number could also be much lower.12 And it is very difficult to tease out how much of this should be attributed to war and occupation, rather than disease. As a rough upper bound, the Columbian exchange may have killed as many as 10 percent of the world’s people.13

Centuries later, the world had become so interconnected that a truly global pandemic was possible. Near the end of the First World War, a devastating strain of influenza (known as the 1918 flu or Spanish Flu) spread to six continents, and even remote Pacific islands. At least a third of the world’s population were infected and 3 to 6 percent were killed.14 This death toll outstripped that of the First World War, and possibly both World Wars combined.

Yet even events like these fall short of being a threat to humanity’s longterm potential.15

[FOONOTE]

In addition to this historical evidence, there are some deeper biological observations and theories suggesting that pathogens are unlikely to lead to the extinction of their hosts. These include the empirical anti-correlation between infectiousness and lethality, the extreme rarity of diseases that kill more than 75% of those infected, the observed tendency of pandemics to become less virulent as they progress and the theory of optimal virulence. However, there is no watertight case against pathogens leading to the extinction of their hosts.

[END FOOTNOTE]

In the great bubonic plagues we saw civilization in the affected areas falter, but recover. The regional 25 to 50 percent death rate was not enough to precipitate a continent-wide collapse of civilization. It changed the relative fortunes of empires, and may have altered the course of history substantially, but if anything, it gives us reason to believe that human civilization is likely to make it through future events with similar death rates, even if they were global in scale.

The 1918 flu pandemic was remarkable in having very little apparent effect on the world’s development despite its global reach. It looks like it was lost in the wake of the First World War, which despite a smaller death toll, seems to have had a much larger effect on the course of history.16

It is less clear what lesson to draw from the Columbian exchange due to our lack of good records and its mix of causes. Pandemics were clearly a part of what led to a regional collapse of civilization, but we don’t know whether this would have occurred had it not been for the accompanying violence and imperial rule. The strongest case against existential risk from natural pandemics is the fossil record argument from Chapter 3. Extinction risk from natural causes above 0.1 percent per century is incompatible with the evidence of how long humanity and similar species have lasted. But this argument only works where the risk to humanity now is similar or lower than the longterm levels. For most risks this is clearly true, but not for pandemics. We have done many things to exacerbate the risk: some that could make pandemics more likely to occur, and some that could increase their damage. Thus even “natural” pandemics should be seen as a partly anthropogenic risk.

### FTC DA

#### 1) IMPLEMENTATION---it guts the AFF at every stage

William E. Kovacic 15, Global Competition Professor of Law and Policy, George Washington University Law School and Non-executive Director, United Kingdom Competition and Markets Authority, “Creating a Respected Brand: How Regulatory Agencies Signal Quality Essay,” George Mason Law Review, vol. 22, no. 2, 2015/2014, pp. 237–258

One determinant of a government agency's effectiveness is its reputation, or "brand." Much like a commercial enterprise, an agency develops a brand that signals quality to various observers. A good reputation can help the agency recruit skilled personnel, gain deference from courts, build credibility with business managers, and build popular support that can yield larger budgets and enhancements to its powers. An agency with a strong brand stands a greater chance of being effective than one with a weak brand.

This Essay considers how branding can affect the performance of the Federal Trade Commission ("FTC") and other agencies responsible for economic regulation. It analyzes how investments in building a good brand enable the regulatory agency to signal quality to various observers- insiders such as agency staff and outsiders such as businesses, consumer groups, courts, and legislators. Part I of this Essay defines the concept of a brand for public agencies. Part II then discusses why an agency's brand can be important to its effectiveness and identifies what types of agency activi- ties either enhance or degrade an agency's brand.

The examination of agency branding has several purposes. One aim is to improve our understanding of how public agencies build a reputation, and to study the role of reputation in determining effectiveness. A closely related goal is to give public officials a better understanding of how they should approach the task of deciding what their agencies must do to pros- per.

A further aim is to underscore the impact of institutional design and managerial incentives on agency performance and to illuminate how design choices and incentive schemes influence the development of a well- respected, coherent agency brand. Various design choices-for example, whether to give the competition agency a single function or a multi-purpose substantive mandate, whether to govern the agency by a single executive or by a board, whether to integrate the tasks of prosecution and adjudication in a single body or to unbundle them among distinct entities-affect the capacity of the agency to enhance the quality of its brand. Incentives that give incumbent leaders reason to make investments in long-term agency capacity and quality have the same effects.

I. BRANDS AND PUBLIC INSTITUTIONS

Public institutions, such as competition or consumer protection agencies, build reputations or "brands" that the agency's own employees and external observers associate with the agency.' Brands perform two functions for the public agency. The first function is informational.2 A good brand conveys a good sense of what an agency does. It communicates, at least in a general way, the scope of the agency's responsibilities and the aims that motivate the agency in the exercise of its powers.

A brand also signals institutional quality. For an agency such as the FTC, the foundations for a good brand are sound substantive programs (e.g., cases, regulations, reports), sound procedures (e.g., meaningful dis- closure of information, rigorous testing of evidence, regular assessment of outcomes), strong capabilities (e.g., deep expertise in economics and law), and a healthy culture (e.g., thoughtfulness, integrity, courage, and a commitment to continuous improvement).' For several reasons, explained below, a strong brand is a valuable asset for a regulatory agency.

A. Deference from Judges

Courts form views about the quality of public agencies-especially if the same court reviews a number of agency decisions over time and develops a general sense of how well the agency functions.4 An agency with a good reputation is more likely to gain the benefit of doubt from a reviewing tribunal than an agency with a weak reputation.' Where judges exercise the discretion inherent in statutory interpretation, they are likely to account for, at least to some degree, the agency's reputation for doing strong substantive work and using sound methods to make policy.'

B. Deference from Legislators

A good brand can help the agency persuade legislators to approve gen- erous budgets and to provide desired expansions of the agency's authority.

Respect from legislators (and other budgetary gatekeepers) can yield needed increases in resources. Perceived improvements in the FTC's performance in the first half of the 1970s inspired Congress to boost the Commission's budget and powers dramatically.7

C. Deference from Other Public Regulators

A good brand can enhance the power of advocacy before other gov- ernment bodies-such as national ministries and local public authorities- that make regulatory decisions that affect the quality of competition. An agency with a reputation for extensive expertise is more likely to be seen as a valuable source of guidance than an agency believed to have little idea of what it is doing. This consideration is especially important to the FTC in seeking to fulfill the competition advocacy function embodied in the agen- cy's original charter and applied extensively during the Commission's his- tory.'

D. Respect from and Credibility with Non-Government Groups

A competition agency's effectiveness depends partly on the reputation it develops among various groups beyond the courts, legislatures, minis-tries, and other government policy making institutions. A good brand builds credibility with the general public, advocacy groups, universities, the media, professional societies, trade associations, and individual businesses.'

Among other effects, the agency's reputation within these groups can influence legislators' views about whether the agency deserves greater resources and more authority, or whether various aspects of an agency's work warrant closer congressional oversight."o The FTC's experience from the late 1970s through the early 1980s il- lustrates the importance of branding to an agency's effectiveness. In the late 1960s, two influential studies of the FTC concluded that the agency had performed poorly for most of its history." One blue-ribbon committee recommended that Congress should dismantle the FTC and allocate its functions to other government bodies if the agency did not undertake immediate, drastic reforms. 2 Congress endorsed this view, and the FTC responded with an ambitious program of competition and consumer protection initiatives."

Two problems accompanied the FTC's new agenda. First, the agency did not account for the political consequences of challenging a large and powerful collection of firms and entire commercial sectors through a mix of ambitious antitrust and consumer protection initiatives. The Commission's programs galvanized strong, bipartisan political opposition that would threaten its very existence by the end of the 1970s and into the early 1980s.1' Second, the agency experienced a severe mismatch between its program commitments and its capacity to deliver. Many high-profile initiatives suffered because the agency could not mobilize the top-quality talent to implement them successfully.

Well before Ronald Reagan became president in January 1981, the FTC's brand had disintegrated in the eyes of various significant external observers. In March 1978, the Washington Post-a key barometer of liberal political sensibilities-scorned the FTC for proposing to restrict television advertising directed toward children.'" A Post editorial called the proposal "a preposterous intervention that would turn the agency into a great national nanny."17 The ridicule from a left-of-center publication ordinarily disposed to favor, rather than oppose, regulatory intervention meant that it was open season on the FTC." In 1979, during legislative debates about measures to curb the FTC's powers, one prominent member of the House of Representatives called the agency "a king-sized cancer on our economy. . .. [A] rogue agency gone insane."" On the day before the 1980 presidential election, Vice President Walter Mondale attacked the FTC for pursuing a case that sought to break up the four leading U.S. cereal producers into smaller firms.20 Mondale informed a political rally in Battle Creek, Michigan (Kellogg's headquarters) that "it is inconceivable to me and to many independ- ent experts that divestiture would be pursued. Neither President Carter nor I would support such an action."2' Mondale added that, if reelected, he and Carter "certainly would" support legislation to bar the FTC from obtaining a divestiture remedy.22 In a number of instances, the courts also made statements that suggested a low regard for the agency's substantive analysis or its way of doing business.23

#### 2) AVOIDANCE---businesses will dodge illegitimate regs

Svirsky et al. 21, Larisa Svirsky, College of Public Health and Center for Bioethics, The Ohio State University; Dana Howard, College of Public Health and Center for Bioethics, The Ohio State University; Micah L. Berman, College of Public Health and Center for Bioethics, The Ohio State University, “E-Cigarettes and the Multiple Responsibilities of the FDA,” The American Journal of Bioethics, vol. 0, no. 0, Taylor & Francis, 04/19/2021, pp. 1–10

People, upon hearing guidance from the FDA, are not mere recipients of information from any source whatsoever. They are agents being advised by a federal institution purportedly responsible for helping to keep them safe and otherwise promote public health. This role the FDA plays as an advisor again weighs in favor of a cautious approach. When a government agency issues advice and then later reverses its position—even if those changes are justified by new scientific discoveries—it can undermine public trust over time.3 That is why the Office of the Surgeon General, starting with its first report on smoking and health in 1964, has been consistently conservative in its conclusions, sometimes to the frustration of public health advocates (U.S. Department of Health and Human Services 2014). The Surgeon General’s Reports are consequently seen as a trusted source, while, in contrast, the public has arguably “lost faith” in the federal government’s dietary guidelines, which have changed repeatedly over time in response to both evolving science and industry influence (National Academies of Sciences, Engineering, and Medicine 2017). The FDA is more highly trusted than other government agencies and public institutes in part because of its reputation (developed mainly outside of the tobacco regulatory context) for “citizen protection,” “vigilance against risks,” and “commitment to scientific principles of assessment.”4 (Carpenter 2010) A growing body of research establishes that such “organizational trust” is, in turn, “a key determinant of how well risk communications are processed and received by the public.”5 [FOOTNOTE 5 BEGINS] 5 An agency’s reputation for quality and reliability has important practical consequences. As former Federal Trade Commission Chairman William Kovacic writes, “A good reputation can help the agency recruit skilled personnel, gain deference from courts, build credibility with business managers, and build popular support that can yield larger budgets and enhancements to its powers.” (Kovacic 2015) All of these outcomes enhance an agency’s ability to fulfill its mission. [FOOTNOTE 5 ENDS] (Osman et al. 2018)

#### ‘Expanding the scope’ is unique and distinct from AFF empirics---it’s the riskiest move possible for competition bureaucrats.

David A. Hyman & William E. Kovacic 14, Hyman is H. Ross & Helen Workman Chair in Law and Professor of Medicine, University of Illinois, and former special Counsel at the Federal Trade Commission; Kovacic is Global Competition Professor of Law and Policy, The George Washington University Law School, “Can’t Anyone Here Play This Game - Judging the FTC’s Critics The FTC at 100: Centennial Commemorations and Proposals for Progress: Essays,” George Washington Law Review, vol. 83, no. 6, 2015/2014, pp. 1948–1978

3. Blindness to Program and Political Risk

The ABA Commission set out three basic guidelines for the FTC's future antitrust work:

(1) Forsake trivia in favor of economically significant matters;123

(2) Emphasize cases involving complex, unsettled questions of competition economics and law, and leave per se cases to the DOJ;124 and

(3) Replace voluntary commitments with binding, compulsory orders. 12 5

Each of these changes certainly sounds sensible, particularly when taken one at a time. After all, who could be against the forsaking of trivia? But, each change involved a shift from a safer law enforcement strategy to a riskier one. The pursuit of economically significant matters galvanizes tougher opposition in litigation and motivates firms to seek out legislative assistance in backing down the agency. Focusing on complex and unsettled areas of the law involves greater litigation risk (because the cases are on the edges of existing doctrine) and exposes the agency more broadly to claims that it is engaged in unprecedented enforcement or sheer adventurism. The pursuit of tougher remedies arouses a stronger defense by respondents and, again, increases efforts to enlist Congress to discipline the FTC.

Although the ABA Commission noted the importance of political support and a vigorous chairman who would "resist pressures from Congress, the Executive Branch, or the business community," 1 26 it paid almost no attention to the predictable consequences of having the FTC occupy the risk-heavy end of the spectrum of all possible enforcement matters. The political science literature before 1969 had emphasized the political dangers inherent in the Commission's expansive norms-creation mandate and its broad information-gathering and reporting powers.1 27 For example, Pendleton Herring's study in the mid-1930s about the political hazards facing economic regulatory bod-ies said the agency's mandate placed it in "a precarious position" from the start:

The parties coming within [the FTC's] jurisdiction were often very powerful. The more important the business, the wider its ramifications, and the more numerous its allies and subsidiaries, the closer it came within the commission's responsibility. To review the firms with which this agency has had official contacts, especially in its early years, is to go down the roster of big business in this country. Making political enemies was soon found to be an incident in the routine of administration. The discharging of official duties meant interfering with business and often "big business."128 Had it read and absorbed the teaching of the available political science literature, the ABA panel would have had to confront deeper, harder questions about the causes of the FTC's performance. The panel missed (or underestimated) the big issue of politics. Like many blue ribbon studies of government performance, the ABA Report was long on demands for bold action and short on practical suggestions about how to cope with the crushing political backlash that boldness can breed.129

B. The Posner Dissent

Posner argued that the FTC would not be able to deliver on the ABA Commission's ambitious agenda because the FTC's leaders and staff lacked the necessary incentives to do so. 130 In his view, FTC Commissioners deliberately avoided confrontation with powerful eco- nomic interests that could frustrate reappointment or deny the board member a suitable landing place in the private sector upon leaving the agency.131 Similarly, FTC staff saw little upside (and considerable downside) to being overly aggressive in enforcing the law.1a2

Posner's assessment was certainly plausible. Government service disproportionately attracts people who plan to stay, and keeping your head down is an excellent way of doing that. "Don't make waves" becomes the default strategy of the lifers, and those who are tempera-mentally unsuited to that approach either self-select out, or are ac- tively encouraged to depart. 33

But matters are not so simple. Regulators that create or adminis- ter a program that threatens major commercial interests can leave government and monetize their expertise by guiding firms through the regulatory shoals.1 34 The prosecution of big cases attracts media at- tention and raises the prominence of the officials who set them in mo- tion. This publicity often translates into attractive offers for post- government employment. Posner also overlooked the emergence of attractive career paths for aggressive enforcement officials outside the private sector. A reputation for toughness would prove to be an asset, not a barrier, for those aspiring to join university faculties, think tanks, or advocacy groups that wanted to add high visibility officials to their ranks.

III. SOME LESSONS AND A FEW MODEST SUGGESTIONS

People like morality tales. The conventional morality tale in- spired by the ABA Report goes like this: In 1969, the FTC had a long history of existence, but almost nothing else to recommend it.1" The ABA Report accurately diagnosed the problems and laid out a clear agenda for the FTC to redeem itself.136 The FTC followed the recom- mendations in the ABA Report, and the agency was saved. All hail the ABA Commission, and the wisdom of those who served onit.13

Of course, life is more complicated. Unambiguous morality tales are more common in children's books than in real life. 38 A close reading of the record indicates that the pre-1969 FTC was not as aw-ful, and the ABA Report was not as good, as the conventional wisdom would indicate.1 39 We consider the lessons that should be drawn and offer four "modest suggestions that may make a small difference" the next time we encounter a similar situation.140

A. Be Careful What You Demand (Or Wish For)

The ABA Commission wanted the FTC to be a fierce and aggressive enforcer/regulator, and it generated a detailed list of all the things the agency had to do to justify its continued existence.141 The FTC responded aggressively to the challenge-but in so doing, it became significantly overextended.

In other work, we consider a number of factors that appear to be associated with good agency performance.14 2 One of the most important factors is whether the agency has the capacity and capability to perform the tasks that it has been given (or for which it has assumed responsibility).143 An agency that is overextended will find itself engaged in a constant process of regulatory triage-meaning it is unlikely to do a good job on any of the tasks within its portfolio of responsibilities. It is one thing to launch a single bet-the-agency case and entirely another to launch a half-dozen of those cases and an equal number of significant rulemaking projects simultaneously-let alone staff each case and rulemaking project so as to maximize the likelihood of good outcomes across the entire portfolio.144

The ABA Commission set a high bar for the FTC to clear if it was to remain in business-and the FTC responded with the enforcement equivalent of building and launching an armada of 1,000 ships.145 Little thought was given by the ABA Commission (or by top FTC management) as to whether the agency was up to the task of waging the functional equivalent of multiple land wars in Asia. 146 In particular, the ABA Commission gave no attention to the time it would take the agency to build the highly skilled teams of professionals it would need to perform the ambitious agenda it had recommended. There should have been an express caution that building this capability would take time. Instead, the ABA Report's "one last chance" admonitionl47 led the FTC to take on a daunting agenda before it had the ability to deliver. This consequence arguably is one of the ABA Commission's most unfortunate legacies. The remarkable thing is that the FTC managed to do as well as it did-notwithstanding the Herculean list of labors handed to it by the ABA Commission.

B. Leadership Incentives Matter

Posner did not think the FTC leadership would ever be able to rouse itself from its stupor.14 8 He also could not envision a set of in- centives that would motivate the FTC to become an activist presence on the regulatory scene. 149 As detailed above, Posner's assessment on both of these issues was wrong.150

But, it does not follow that the FTC's leadership (or the leader- ship of any other agency) is subject to an optimal set of incentives. Agency leadership always faces a choice between consumption and investment-and the stakes are systematically skewed toward con- sumption (in the form of launching new high-profile cases) by the short duration of any given leader's tenure.'51 As one of us noted in another article, the case-centric approach to evaluating agency per- formance-which is what the ABA Commission effectively embraced and encouraged-has a critical vice:

It accords no credit to long-term capital investments. It gives decisive weight to the initiation of new cases. This incentive system can warp the judgment of incumbent political appoin- tees who typically serve terms of only a few years. The per- ceived imperative to create new cases can create a serious mismatch between commitments and capabilities, as the si- rens of credit-claiming beckon today's manager to overlook the costs that improvident case selection might impose on the agency in the future, well after the incumbent manager has departed. It is a common aphorism in Washington that agency leaders should begin by picking the low-hanging fruit.... What is missing in the lexicon of Washington poli- cymaking is an exhortation to plant the trees that, in future years, yield the fruit.1 52 [FOOTNOTE 152 BEGINS] 152 Kovacic,supra note 144, at 922; see also Kovacic, supra note 151, at 189 ("[A] short-term perspective may incline the manager to launch headline-grabbing initiatives with inadequate regard for the matter's underlying merits or the ultimate cost to the agency, in resources and reputation, in litigating the case. If the case goes badly, the manager responsible for the take-off rarely is held to account for the crash landing. He can hope the passage of time will dim memories of his involvement, he can blame intervening agents for their poor execution of his good idea, or he can shrug his shoulders and say he was making the best of the fundamentally bad situation that policymakers encounter in the nation's capital."); Timothy J. Muris, Principlesf or a Successful Competition Agency, 72 U. CHi. L. REV. 165, 166 (2005) ("An agency head garners great attention by beginning 'bold' initiatives and suing big companies. When the bill comes due for the hard work of turning initiatives into successful regulation and proving big cases in court, these agency heads are often gone from the public stage. Their successors are left either to trim excessive proposals or even to default, with possible damage to agency reputation. The departed agency heads, if anyone in the Washington establishment now cares about their views, can always blame failure on faulty implementation by their successors."). [FOOTNOTE 152 ENDS]

Thus, if anything, the ABA Commission's "do something" recommendations encouraged (and hyper-charged) precisely the wrong incentives.

C. Don't Forget About Politics

Perhaps the largest failing of the ABA Commission was its failure to anticipate the political risks associated with its recommendations. Academics and do-gooders will enthusiastically lecture all and sundry about how the government exists to promote the general public interest-but decades of research on political economy make it clear that there is not much of a constituency for that mission.153 Indeed, an agency that seeks to promote the general public interest is an agency without any constituency.1 54

Thus, the ABA Commission wound up and sent into battle an agency without any real constituency or political backing, to wage war against a large and politically powerful collection of firms in every sector of the economy. There is no question that the FTC was unlucky, in that many of its most enthusiastic supporters were being voted out of office at the same time the FTC was picking fights with everyone and their brother.155 But, luck aside, if you were trying to create a "coalition of the willing" determined to clip the wings of the FTC, you would be hard-pressed to pick a better strategy than the one selected by the ABA Commission.15 6

Although the members of the ABA Commission were politically connected insiders, they completely failed to anticipate the firestorm that would engulf the FTC as a direct result of the agency's adoption of the ABA Report's recommendations. 157 Had they been more insightful about the predictable consequences, they might have been considerably more measured and circumspect in their marching orders.158

#### Even without actual backlash---the fear of potential backlash causes the FTC to regulate conservatively, which triggers the impacts.

Kathleen Watson 16, researcher at New America's Open Technology Institute, “The Federal Trade Commission Doesn’t Need Congress’ “Disruption”,” New America, 8/18/16, https://www.newamerica.org/oti/blog/federal-trade-commission-doesnt-need-congress-disruption/

The FTC Robust Elderly Protections and Organizational Requirements to Track Scams (REPORTS) Act (H.R. 5098) would create more roadblocks for the FTC. This bill would require the FTC to submit a forward-looking report to Congress each December that outlines any policies the agency might implement, rulemakings it might issue, and non-regulatory guidelines it might develop over the next year, along with dates and timelines of these future actions. This bill would create a Congressional oversight regime of unprecedented magnitude, allowing Congress to act as a back-seat driver to the FTC and stall politically disfavored actions in their nascent state. If the REPORTS Act became law, the FTC may be less likely to take actions that would protect consumers for fear of retaliation from Congress. In such a case, Congress’ interference could harm the consumers and businesses that rely on the FTC to police unfair and deceptive market behaviors. This bill leaves too many questions unanswered regarding the ways it would be carried out and must be stopped.

#### Recent streamlining is improving resource allocation

Lindsay Kryzak 21, FTC Office of Public Affairs, “FTC Authorizes Investigations into Key Enforcement Priorities,” FTC, 7/1/21, https://www.ftc.gov/news-events/press-releases/2021/07/ftc-authorizes-investigations-key-enforcement-priorities

The Federal Trade Commission voted to approve a series of resolutions authorizing investigations into key law enforcement priorities for the next decade. Specifically, the resolutions direct agency staff to use “compulsory process,” such as subpoenas, to investigate seven specific enforcement priorities. Priority targets include repeat offenders; technology companies and digital platforms; and healthcare businesses such as pharmaceutical companies, pharmacy benefits managers, and hospitals. The agency is also prioritizing investigations into harms against workers and small businesses, along with harms related to the COVID-19 pandemic. Finally, at a time when merger filings are surging, the agency is ramping up enforcement against illegal mergers, both proposed and consummated.

In remarks delivered during the open meeting, Chair Lina M. Khan noted that the resolutions approved today represent an important step in rethinking the work of the FTC. Instituting new cross-agency, investigatory resolutions will promote a more holistic use of the FTC’s enforcement authorities to stop bad actors across markets.

“The reforms are designed to ensure that our staff can comprehensively investigate unlawful business practices across the economy,” said Chair Khan. “They will help relieve unnecessary burdens on staff and cut back delays and ‘red tape’ bureaucracy when it comes to advancing our Commission’s law enforcement priorities. This is particularly important given that we are in the midst of a massive merger boom.”

Compulsory process refers to the issuance of demands for documents and testimony, through the use of civil investigative demands and subpoena. The FTC Act authorizes the Commission to use compulsory process in its investigations. Compulsory process requires the recipient to produce information, and these orders are enforceable by courts. The Commission has routinely adopted compulsory process resolutions on a wide range of topics. Many of these resolutions cover specific industries, like the automobile industry or the postsecondary education industry, while others involve business practices that cut across sectors, like privacy or the targeting of older Americans.

The actions taken today will broaden the ability for FTC investigators and prosecutors to obtain evidence in critical investigations on key areas where the FTC’s work can make the most impact. Each omnibus authorizes investigations into any competition or consumer protection conduct violations under the FTC Act. The omnibuses will also allow staff to use compulsory process to investigate both proposed mergers and consummated mergers. Individual Commissioners will continue to be required to sign compulsory process documents prior to issuance. With these in place, the FTC can better utilize its limited resources and move forward in earnest to fix the market structures that allow the worst predators to proliferate.

#### BUT, it’s narrow

Cat Zakrzewski 21, technology policy reporter, tracking Washington's efforts to regulate Silicon Valley companies, “Will Lina Khan bring a reckoning to Silicon Valley? She’ll face major challenges,” Washington Post, 6/17/21, https://www.washingtonpost.com/technology/2021/06/17/lina-khan-ftc-actions/

It seems likely the agency will see its funding grow under Khan, especially after the Senate passed legislation that would overhaul merger filing fees to provide more financing to antitrust enforcers. House lawmakers have introduced a similar proposal, which is less controversial than some of the other tech competition bills.

#### Acquisition’s easy if you have money---Mueller underestimates the risk

Andrew Futter 21, Associate Professor of International Politics and Director of Research for Politics and International Relations at the University of Leicester, “Nuclear Weapons and Non-State Actors,” The Politics of Nuclear Weapons, Springer International Publishing, 2021, pp. 197–219 DOI.org (Crossref), doi:10.1007/978-3-030-48737-9\_9

There is no consensus on just how serious the threat of nuclear terrorism is.22 This is because it is very hard to judge with any confidence. That said, at the time of writing this second edition of this book (in 2020), there is a feel- ing that the nuclear terrorist threat is not as acute, or at least does not domi- nate the nuclear security debate to the extent that it did a decade ago. John Mueller for one has been highly sceptical of the nuclear terrorism “hype”:

it is not at all clear that any terrorist groups really want the weapons or are remotely capable of obtaining them should the desire to do so take hold of them. If they try, there are a host of practical and organisational difficulties that make their likelihood of success vanishingly small.23

Nevertheless, governments around the globe have treated the threat as serious and pressing and continue to do so. Table 9.1 gives an overview of the differ- ing views of the threat of nuclear terrorism:

According to David Albright, Osama bin Laden approached A. Q. Khan several times in the 1990s seeking nuclear-related material but was rebuffed.24 However, it is believed that a rival of Khan’s within the Pakistani nuclear hierarchy, Sultan Bashiruddin Mahmood, did meet several times with bin Laden and other leading members of Al Qaeda, and may have promised nuclear-related technologies through the Ummah Tameer-e-Nau network.25 Indeed, in 1998 bin Laden declared:

Acquiring [nuclear and chemical] weapons for the defense of Muslims is a religious duty. If I have indeed acquired these weapons, then I thank God for enabling me to do so. And if I seek to acquire these weapons, I am carrying out a duty. It would be a sin for Muslims not to try to possess the weapons that would prevent the infidels from inflicting harm on Muslims.26

However, the possibility of a safe haven in Afghanistan for a possible Al Qaeda nuclear bomb project ended when the Taliban regime was toppled in 2001 by coalition forces as part of Operation Enduring Freedom. Nevertheless, and while US Special Forces killed Osama Bin Laden at a compound in Abbottabad, Pakistan on 2 May 2011,27 the spectre and possibility of a nuclear threat from Al Qaeda and associated groups remain. Indeed, in the past decade the nuclear

[TABLE 9.1 OMITTED]

terrorist threat has shifted to a new entity, closely linked with Al Qaeda, known as the Islamic State (or Daesh, ISIS or ISIL). It is believed that ISIS has tried to acquire the material needed to make a dirty bomb,28 and in 2014 allegedly captured nuclear materials from Mosul University. In 2016, NATO warned that ISIS might be plotting to carry out biological and nuclear attacks in Europe.29 However, in March 2019 a “territorial victory” was declared over ISIS in Syria, which is likely to make any nuclear ambitions far more difficult.30

How Might Terrorists Get a Nuclear Device or Cause a Nuclear/Radiological Disaster?

There are a number of ways that a terrorist group might seek to acquire and use a nuclear bomb.31 The most difficult and least likely (though not impos- sible) method would be for a terrorist group to build a bomb from scratch without any outside help and in complete secrecy. Slightly more plausible is that terrorists could steal or somehow acquire a working bomb or the fissile material that could then be used in a very crude Improvised Nuclear Device. At a slightly lower level, terrorists might choose to attack a nuclear mili- tary facility or civilian nuclear power plant, use more easily accessible radioac- tive material in a radiological dirty bomb or seek to cause or exacerbate a nuclear crisis in other ways. However, it is worth noting that even if a terrorist group did acquire a nuclear device or the ability to create a nuclear disaster, this would not automatically mean that it was to be used/carried out. Indeed, evidence suggests that certain groups might use such a capability principally as a bargaining chip or as a threat.32

By far the most difficult pathway would be to build a bomb from scratch. It is highly unlikely that any terrorist group could do this without considerable outside help (e.g. from a nation state, see below). Each stage of the process would be incredibly difficult to master; producing the necessary fissile mate- rial and fabricating the weapons would be an enormous challenge and would require access to sophisticated modern facilities. Producing a working dirty bomb would be easier, but still require significant expertise, time and money. Even if a terrorist group were to acquire all the necessary material and tech- nology for a nuclear bomb (for example through an illicit source similar to the A. Q. Khan network), they would still need a place to build and maybe test it (the firing mechanism rather than a full nuclear expulsion), which would almost certainly require state support.33 Finally, terrorists must seek to pro- duce such a weapon in complete secrecy, which would be very difficult, if not impossible.

A more likely pathway could be through a terrorist group acquiring a bomb and fissile material. In theory while there is no reason why a state could not provide a terrorist organisation with either a working nuclear bomb or the fissile material needed for a weapon, a bigger threat is that terrorists could acquire the necessary knowhow, technology and material illicitly to produce their own. The illicit acquisition of fissile material is perhaps a greater threat than a state providing terrorists with a working bomb, although such a move would still have significant ramifications for the state or organisations involved should the transfer be uncovered. However, if terrorists did acquire sufficient fissile material, they could certainly build a crude Improvised Nuclear Device.

Or a potentially much easier option would be to build a radiological weapon such as a dirty bomb (see below). While debate remains about whether a “rogue state” might provide terrorists with nuclear weapons,34 it is generally accepted that a number of national government authorities were complicit to varying degrees in the A. Q. Khan network.35

#### Purchase is easy

Dr. Mansour Alshammari 21, Secretary-General of the the Global Center for Combating Extremist Ideology, “The Great Threat: Extremism and the Spread of Nuclear Terrorism,” Etidal, July 2021, https://etidal.org/upload/2021/07/The-Great-Threat:Extremism-and-the-Spread-of-Nuclear-Terrorism.pdf

In May ,2015 ISIS announced their desire to obtain a nuclear weapon34. Despite this shocking announcement, it was clear that the terrorist organization had no technical nuclear expertise even during its great power stage between 2014- 2015. The group then resorted to trying to purchase nuclear weapons, using their large revenues at that time, which had reached about $80 million a month35. Two months before ISIS announced their desire to buy an atomic bomb, there was another incident to sell nuclear materials36.

In the five years preceding ISIS’ announcement, law enforcement authorities in some parts of Eastern Europe foiled four separate attempts by gangs that sought to sell radioactive materials to extremists. In 2010, three individuals were arrested for selling enriched uranium. In 2014, investigators thwarted an attempt to sell unenriched uranium to a potential buyer in the Middle East for $15,000. Six of the smugglers were arrested, while five others were able to escape, fleeing with nuclear materials in their possession 37. Two months before ISIS announced their desire to buy an atomic bomb, there was another incident to sell nuclear materials38.

These five years mark only one episode in the nuclear materials’ black market, but similar incidents have taken place both before and after this, which cannot be forgotten. In 1996, Al-Qaeda’s second-in-command Ayman Al-Zawahiri, sought to buy nuclear materials from Chechen extremist groups in conjunction with the intense global search for nuclear materials that disappeared after the collapse of the Soviet Union, to prevent extremist’s accesses. Western security reports have confirmed that Al-Qaeda had already bought 20 nuclear bags for $30 million in cash and two tons of refined heroin in laboratories in Afghanistan39. The attempts of terrorist organizations to purchase nuclear materials did not stop very recently. In 2016, six people were arrested in Georgia while attempting to sell more than one kilogram of uranium in the black market for three million dollars40, this being the second arrest of its kind in a month41.

#### Tons of motives for nuclear terror

Andrew Futter 21, Associate Professor of International Politics and Director of Research for Politics and International Relations at the University of Leicester, “Nuclear Weapons and Non-State Actors,” The Politics of Nuclear Weapons, Springer International Publishing, 2021, pp. 197–219 DOI.org (Crossref), doi:10.1007/978-3-030-48737-9\_9

In this regard, the biggest nuclear concern are terrorist groups that are ideological rather than political, those that can operate without significant state support, and groups with members that may be prepared to sacrifice their own lives for their cause. Suicide terrorists and martyrs may therefore repre- sent the biggest nuclear danger.

Unlike nation states, it is doubtful that a terrorist group would choose to deliver a nuclear device by ballistic missile or aircraft (although not impossi- ble), since access to these types of capability would also probably require con- siderable help from a nation state and probably be unnecessary for what the terrorist group was trying to achieve (although a nuclear-capable missile or airplane could theoretically be stolen, hijacked or even hacked). Instead, it is more likely that a nuclear device would be hidden in a shipping container or a truck, as a small nuclear bomb would be incredibly difficult to detect enter- ing a port or a city, or via a direct attack on a civilian or military nuclear instal- lation.16 As a result, if a terrorist group bent on mass destruction were to acquire a nuclear device or build a dirty bomb (which spreads radiation but does not involve a nuclear yield) or gain access to a nuclear weapon in another way, it would be very difficult to defend against its use, irrespective of intelli- gence, border security and other means of detection and prevention.

Nuclear terrorism is a label that refers to a broad range of groups and enti- ties with different intentions and that might use a nuclear device in different ways. According to Charles Ferguson and William Potter,17 there are four types of terrorist groups that might seek to acquire a nuclear weapon;

• Apocalyptic groups. Groups that believe the end of the world is nigh and should be brought about through violence. Apocalyptic groups are often small ultra-religious sects. The Japanese Aum Shinrikyo cult is a good example of an apocalyptic group. Indeed, Aum is rumoured to have sought nuclear weapons from Russia in the early 1990s and demonstrated its will- ingness to cause mass casualties by killing hundreds of people on the Tokyo subway with sarin gas in 1995. These groups are arguably the most likely nuclear threat, although they are small and peripheral.18

• Politico-religious groups. These groups dominate the current debate about nuclear terrorism. They have both political and religious motivations and can be either transnational or geographically focussed. ISIS and Al Qaeda in Syria and Iraq are good examples of politico-religious groups, as are Hezbollah in Lebanon, Jamaat al Islamiya in Indonesia or neo-Nazi parties in parts of Europe and Latin America. Al Qaeda under Osama bin Laden is believed to have been seeking a nuclear device and/or fissile material since the early 1990s, and affiliates linked with ISIS may still be trying to do so today.19 However, whether these groups are prepared to conduct a nuclear attack remains the subject of debate (see below).

• Nationalist/separatist groups. These are groups seeking political objectives, such as national territorial independence or greater representation for a particular ethnic, tribal and sometimes religious entity. Examples include the Irish Republican Army in Ireland/the United Kingdom, the Tamil Tigers in Sri Lanka, Chechen rebels in Russia, Maoist guerrillas in India, ETA in Spain and possibly Boko Haram in Nigeria (Boko Haram might also fit under political-religious groups too). These groups are least likely to see the use of nuclear weapons as an attractive option due to the likely impact on their own people and territory (though it could be used as a threat). That said, rumours abound that the Chechen separatists have tried to obtain a nuclear device (and possibly acquired some material20), and it is highly likely that factions within other groups may also have entertained the idea as well.21

• Single-issue terrorists. These are the militarised aspects of campaign groups that seek to change policies or behaviour regarding a narrow political or social issue. Environmental, anti-abortion, and animal rights groups as well as anti-nuclear protesters fall under this category. These groups are unlikely to engage in nuclear terrorism (either the use or threat of use), although small militant factors within these groups could represent a risk. Anti- nuclear protestors might seek to sabotage a nuclear power plant or military installation to draw attention to their cause but are unlikely to seek a nuclear explosion, or to acquire a nuclear device or dirty bomb.

### PTX DA

#### Dems not focusing on anti-trust now---no thumper AND it requires significant PC---we control link UQ

Sagers 21[Christopher, “AMERICAN ANTITRUST AND THE NEAR TERM: CONSISTENCY, ONE IMAGINES, AND SOME REASONS WHY,” accessed 5-21-21, <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en>]

15. And so I reach the same conclusion being reached by many other Americans who care about antitrust and think it has been wrecked, and hoping for action that even five years ago I would have said was crazy. The only hope left is legislative reform of statutory antitrust. I think Congress should amend the law to reaffirm its own intention that the law be enforced proactively, aggressively, prophylactically, and for real, without giving every defendant the benefit of every conceivable doubt. Congress should do that in a way that keeps the courts from thwarting its intent through nullifying interpretations, as they have done many times before. Obviously, Senate control is again quite relevant. Under those Senate norms that still remain—in which we retain a filibuster rule for ordinary legislation—a party with fewer than 60 seats can typically do little. The two parties do not apparently work together in hardly any fashion. The party that holds the majority, even if only by one vote, controls the institution and its actions outright, but the minority can typically keep it from taking meaningful substantive action. Where the opposing party holds the White House, Senate minorities have filibustered essentially all legislation, apparently just to deny the opposing President any opportunity for campaign-trail self-congratulation. When the majority party can take effective action, it will only be in extraordinary circumstances or by using a filibuster exception, like the budget reconciliation procedure that was used in connection with the Obamacare legislation in 2010, and in subsequent Republican efforts to repeal it. [304] But antitrust, however important and however much it has returned to popular consciousness, seems unlikely to be so high on the Democratic agenda that it is chosen as one of the extraordinary matters Democrats prioritize in this way, even if they win Senate control. 16. And on top of all of that, it does not help that in this world, in which we dwell on ideas and not institutions—perhaps because institutions seem boring, and do not invite intellectual abstraction or Manichean dreams of good and evil—we see sharp divisions even within our factions. Only liberals and progressives in America favor more antitrust enforcement, but among us we have several hotly disputed disagreements, and some difficulties getting along. It reflects in microcosm the struggle of left and center of the election of 2016. So in 2021 and thereafter, it seems like it will be a fair bit of work to build any effective reform coalition. [305]

#### Empirically---it causes intra-party fights

Scher 7-19 (Bill Scher, the host of the history podcast "When America Worked" and the co-host of bipartisan online show and podcast, A Short History of Democrats and Antitrust

Biden’s war against corporate gigantism is good policy and better politics. <https://washingtonmonthly.com/2021/07/19/a-short-history-of-democrats-and-antitrust/>, y2k)

Biden’s revival of antitrust isn’t just good policy; it’s also good politics. That’s because it can bridge ideological tensions between the party’s younger left flank and its older centrists. Antitrust has appeal to both factions. Talk of restoring competition may upset a handful of giant corporations, but not the wider swath of smaller businesses and entrepreneurs. Socialists may not love capitalism but it’s hard to see them getting too mad at moderate Democrats who draw real corporate blood in the name of repairing capitalism. Yet intra-party tensions remain. During a recent Congressional Progressive Caucus conference call, a heated dispute broke out as Congresswoman Zoe Lofgren criticized the authors of aggressive antitrust legislation for hasty work, and Congressman David Cicilline accused Lofgren of shilling for Silicon Valley. If Biden is to succeed where his predecessors fell short, he will need to be mindful of his party’s history.

#### Link turns case---It causes the plan to be ignored AND external war

Jennifer Sensiba 20, Author at Clean Technica, Long Time Efficient Vehicle Enthusiast, Writer, and Photographer, “It’s All About Political Capital”, Clean Technica, 11/6/2020, https://cleantechnica.com/2020/11/06/dont-encourage-biden-to-waste-political-capital/

In short, political capital is a way to think about political power in democratic countries. Yes, winning elections does give some political power, but you can’t effectively use it unless you have coalitions, alliances, trust, goodwill, and influence. Your earned trust and connections are like money (capital). You can work hard to earn it and build it up, but it’s easy to spend it and even waste it, just like money.

If you get power from an election and then quickly spend all of the political capital impressing loyalists, you’ll get to the point where you can’t win future elections (Trump is a great example of this), can’t get votes together for legislation, and can’t get people to help you in a variety of other ways. At worst, a political leader who has run completely out of political capital might not even be able to get normal citizens to follow laws. As the consent of the governed is withdrawn, you see protests, riots, violence, terrorism, and even war.

#### PC is working---Biden is confident he can unite the party but it will require continued effort

Jim Tankersley et al, Katie Rogers and Zolan Kanno-Youngs 10-1 [NYT “Biden tries to broker a deal among Democrats, with prodding and patience,” 10-1-21, <https://www.nytimes.com/live/2021/10/01/us/infrastructure-bill-house>, hec]

President Biden is acting as a cheerleader, a sounding board and, increasingly, a prod for holdout for Democrats in the most consequential negotiation of his presidency: his effort to unite warring factions of his party behind a pair of bills that carry the bulk of his economic platform and other domestic agendas. Mr. Biden, who was headed to Capitol Hill to talk with congressional Democrats on Friday afternoon, spent much of the week welcoming key lawmakers to the White House for discussions. He has telephoned others from the Oval Office, or sometimes from its adjoining private dining room. Those close to the president say Mr. Biden still sees himself as uniquely positioned to broker an agreement, citing his success in uniting the party around a $1.9 trillion economic aid bill this spring. But the president has found these negotiations more difficult and slower going than the relief bill as donors and activists are urging each wing of its party to hold a tough line in negotiations. He has practiced patience with progressives and moderates alike, even as Democrats in the House and Senate traded shots over their positions on the size of a spending-and-tax cuts package and as the House barreled past deadlines for a vote on a bipartisan infrastructure bill. Aides say Mr. Biden’s strategy has been to keep the negotiations going, in order to keep them — and his agenda — alive. As the week wore on, administration officials and their outside allies began to brace for the legislative push to stretch deep into the autumn, and possibly run into the December holidays.

#### CCEP is the enforcement mechanism and it offers an incentives program---none of their ev assumes it

Yvonne Mcintyre & Derek Murrow 9-14 [September 14, 2021 Yvonne Mcintyre Derek Murrow, "House Proposes Strong Clean Electricity Performance Program," NRDC, 9-14-2021, https://www.nrdc.org/experts/yvonne-mcintyre/house-proposes-strong-clean-electricity-performance-program, hec]

The House Energy & Commerce Committee is marking up legislation today that will make significant progress toward achieving President Biden’s 100% clean electricity by 2035 goal, by investing federal money to help utilities accelerate clean electricity development. The ambitious Clean Electricity Performance Program (CEPP) will drive investment that reduces emissions, creates jobs and grows the economy. The Congress and the President now need to ensure it remains strong through final passage to deliver a transformed power sector. The science is clear: we’ve got to cut the carbon pollution from burning fossil fuels in half by 2030, and stop adding it to the atmosphere altogether by 2050, to keep the climate crisis from blowing into a full-on catastrophe. That starts with cleaning up the dirty power plants that account for a third of our carbon footprint. The Clean Electricity Performance Program is designed to help support and accelerate this broad shift, by making a $150 billion public investment over the coming decade in power companies that meet annual targets for expanding clean electricity. To ensure proper incentives and a level playing field, the CEPP also collects a payment from power companies

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that fail to meet those targets. The CEPP is a critical part of the broader federal investments in the Build Back Better Act to transform the electric sector, with portions of the act moving through the Energy & Commerce, Ways and Means and other committees. A Clean Electricity Performance Program Is Popular and Delivers Massive Benefits A broad majority of the country, 62 percent (only 30 percent oppose), supports President Biden’s goal of moving the country to 100-percent clean electricity by 2035, to confront the climate crisis and cut pollution. And the appeal extends to every region of the nation—a majority in all 50 states and 429 of the 435 Congressional districts support federal action to achieve 100 percent clean electricity by 2035. The CEPP, a key part of Biden’s Build Back Better agenda, will make investments that set us on course to achieve that goal, getting us to 80 percent clean power by 2030. The House bill provides an incentive and fee structure to ensure that each power company—no matter where they are today— will increase their proportion of clean energy at a steady, four percent per year rate. This means that companies that are just getting started and those that are already well on their way will all have an incentive to keep going. Accelerating the deployment of clean electricity and getting on the pathway to 80% clean by 2030 delivers massive benefits. A CEPP program that results in at least 80% zero-emission electricity by 2030 will reduce overall power sector CO2 emission by more than 80% from their high point in 2005. It will also reduce the power sector’s SO2 emissions by 88-98% and its NOx emissions by 71-91% compared to levels expected under business as usual.